

1 S.193

2 Introduced by Senator Flory

3 Referred to Committee on

4 Date:

5 Subject: Probate; decedents' estates

6 Statement of purpose of bill as introduced: This bill proposes to modernize
7 and restructure Vermont law regarding decedents' estates.

8 An act relating to decedents' estates

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 Sec. 1. 14 V.S.A. chapter 1 is amended to read:

11 CHAPTER 1. WILLS

12 § 1. WHO MAY MAKE

13 ~~A person of age and sound mind may devise, bequeath and dispose of his~~
14 ~~estate, real and personal, and of any right or interest which he has in any real or~~
15 ~~personal estate, by his last will and testament, and the word "person" shall~~
16 ~~include a married woman.~~ Every individual 18 years of age or over who is of
17 sound mind may make a will in writing.

1 § 2. DEPOSIT OF WILL FOR SAFEKEEPING; DELIVERY; FINAL
2 DISPOSITION

3 (a) ~~A testator may deposit a~~ A will may be deposited for safekeeping in the
4 Probate Division of the Superior Court for the district in which the testator
5 resides ~~on the~~ payment to the Court of the applicable fee required by 32 V.S.A.
6 § 1434(a)(17). The register shall give to the testator a ~~certificate of deposit~~
7 receipt, shall safely keep each will so deposited, and shall keep an index of the
8 wills so deposited.

9 (b) Each will so deposited shall be ~~inclosed~~ enclosed in a sealed ~~wrapper~~
10 ~~having inscribed thereon~~ envelope on which is written the name and residence
11 address of the testator, ~~the day when and the person by whom it was deposited,~~
12 names and ~~the wrapper may also have indorsed thereon the name~~ addresses of
13 ~~the person to whom~~ executors named in the will ~~is to be delivered after the~~
14 ~~death of the testator.~~ The ~~wrapper~~ will shall not be opened until it is delivered
15 to a person entitled to receive it or until otherwise disposed of ~~as hereinafter~~
16 ~~provided~~ by the court.

17 (c) During the life of the testator, that will shall be delivered only to the
18 testator, or in accordance with the testator's order in writing duly
19 acknowledged or otherwise proved by oath to the satisfaction of a subscribing
20 ~~witness~~ the court, but the testator's duly authorized legal guardian or
21 attorney-in-fact may at any time inspect and copy the will in the presence of

1 the judge or register. ~~After the death of the testator it shall be delivered on~~
2 ~~demand to the person named in the indorsement.~~

3 (d) ~~If the will is not called for by the person named in the indorsement, it~~
4 ~~shall be publicly opened at a time to be appointed by the Court as soon as may~~
5 ~~be after notice of the testator's death. If a petition to open a decedent's estate~~
6 ~~is filed in a district other than where the will has been kept, the will shall be~~
7 ~~delivered to the executor therein named or to the person whose name is~~
8 ~~indorsed on the wrapper or shall be filed in the other Court, as the Court may~~
9 ~~order. [Repealed.]~~

10 (e) Except as provided ~~herein~~ in this section, wills deposited for
11 safekeeping or any index of wills so deposited are not open to public
12 inspection during the life of the testator.

13 § 3. ~~AFTER ACQUIRED REAL ESTATE MAY PASS BY WILL~~ MAY
14 PASS ALL PROPERTY AND AFTER-ACQUIRED PROPERTY

15 Real estate acquired after making a will shall pass thereby as if the testator
16 had possessed it at the time of making the will, if it appears by the will that
17 ~~such was his or her intention.~~ A will may provide for the passage of all
18 property the testator owns at death and all property acquired by the estate after
19 the testator's death.

1 § 4. ~~WHOLE INTEREST TO PASS; EXCEPTION~~

2 ~~A devise of land in a will shall convey all the estate which the devisor could~~
3 ~~devise in such lands, unless it clearly appears by the will that he or she~~
4 ~~intended to convey a less estate. [Repealed.]~~

5 § 5. EXECUTION OF WILL; REQUISITES

6 ~~Except such nuncupative wills as are hereinafter mentioned, a will shall not~~
7 ~~pass any real or personal estate, or charge or affect the same, unless it is A will~~
8 ~~shall be:~~

9 (1) ~~in writing and;~~

10 (2) ~~signed in the presence of two or more credible witnesses by the~~
11 ~~testator; or by in the testator's name ~~written~~ by some other person in the~~
12 ~~testator's presence and by the testator's express direction; and~~

13 (3) ~~attested and subscribed by ~~two or more credible~~ the witnesses in the~~
14 ~~presence of the testator and of each other.~~

15 § 6. NUNCUPATIVE WILL

16 ~~A nuncupative will shall not pass personal estate when the estate thereby~~
17 ~~bequeathed exceeds the value of \$200.00, nor shall such will be proved and~~
18 ~~allowed, unless a memorandum thereof is made in writing by a person present~~
19 ~~at the time of making such will, within six days from the making of it, nor~~
20 ~~unless it is presented for probate within six months from the death of the~~
21 ~~testator. [Repealed.]~~

1 § 7. HOW MADE BY SOLDIER OR SAILOR; MILITARY WILL

2 (a) The provisions of this chapter shall not prevent ~~a soldier~~ a person in
3 ~~actual~~ active military service, ~~or a mariner or seaman at sea,~~ from disposing of
4 his or her ~~wages or other personal~~ estate as he or she might otherwise have
5 done.

6 (b) Notwithstanding any other provision of law, a military will prepared
7 and executed in compliance with, and containing a provision stating that the
8 will is prepared pursuant to, 10 U.S.C. § 1044d shall be deemed to be legally
9 executed and shall be of the same force and effect as if executed in the mode
10 prescribed by the laws of this ~~state~~ State.

11 ~~§ 8. SUBSEQUENT INCOMPETENCY OF WITNESSES~~

12 ~~If the witnesses attesting the execution of a will are competent at the time of~~
13 ~~attesting, their becoming subsequently incompetent shall not prevent the~~
14 ~~probate and allowance of the will. [Repealed.]~~

15 § 10. DEVISE OR LEGACY TO WITNESS

16 ~~If a person, other than an heir at law, attests the execution of a will whereby~~
17 ~~he or she or his wife or her husband is given a beneficial devise, legacy or~~
18 ~~interest in or affecting real or personal estate, such devise, legacy or interest~~
19 ~~shall be void so far only as concerns such person or his wife or her husband or~~
20 ~~one claiming under such person, husband or wife, unless there are three other~~
21 ~~competent witnesses to such will. Such person so attesting shall be admitted as~~

1 ~~a witness as if such devise, legacy or interest had not been made or given. A~~
2 ~~mere charge on the real or personal estate of the testator for the payment of~~
3 ~~debts shall not prevent his creditors from being competent witnesses to his~~
4 ~~will. Any beneficial devise or legacy made or given in a will to a subscribing~~
5 ~~witness to the will or to the spouse of a subscribing witness shall be voidable~~
6 ~~unless there are two other competent, subscribing witnesses to the will.~~
7 Notwithstanding this section, a provision in the will for payment of a debt shall
8 not be void or disqualify the creditor as a witness to the will.

9 § 11. HOW REVOKED

10 ~~A will shall not be revoked, except by implication of law, otherwise than by~~
11 ~~some will, codicil or other writing, executed as provided in case of wills; or by~~
12 ~~burning, tearing, canceling or obliterating the same, with the intention of~~
13 ~~revoking it, by the testator himself, or by some person in his or her presence~~
14 ~~and by his or her express direction.~~

15 (a)(1) A will is revoked:

16 (A) by executing a subsequent will that revokes the previous will
17 expressly or by inconsistency; or

18 (B) by performing a revocatory act on the will, if the testator
19 performed the act with the intent and for the purpose of revoking the will or
20 part or if another individual performed the act in the testator's conscious
21 presence and by the testator's direction.

1 (2) As used in this subsection, “revocatory act on the will” includes
2 burning, tearing, canceling, obliterating, or destroying the will or any part of it.
3 A burning, tearing, or canceling is a “revocatory act on the will,” whether or
4 not the burn, tear, or cancellation touched any of the words on the will.

5 (b) The testator is presumed to have intended a subsequent will to replace
6 rather than supplement a previous will if the subsequent will makes a complete
7 disposition of the testator’s estate. If this presumption arises and is not
8 rebutted by clear and convincing evidence, the previous will is revoked and
9 only the subsequent will is operative on the testator’s death.

10 (c) The testator is presumed to have intended a subsequent will to
11 supplement rather than replace a previous will if the subsequent will does not
12 make a complete disposition of the testator’s estate. If this presumption arises
13 and is not rebutted by clear and convincing evidence, the subsequent will
14 revokes the previous will only to the extent the subsequent will is inconsistent
15 with the previous will, and each will is fully operative on the testator’s death to
16 the extent they are not inconsistent.

17 Sec. 2. 14 V.S.A. chapter 3 is amended to read:

18 CHAPTER 3. PROBATE AND PROCEDURE FOR
19 CONSTRUCTION OF WILL

20 § 101. WILL NOT EFFECTIVE UNTIL ALLOWED

21 ~~A will shall not pass either real or personal estate unless it is proved and To~~
22 be effective a will must be allowed in the probate division of the superior court

1 Probate Division of the Superior Court, or by appeal in the ~~superior or supreme~~
2 ~~court~~ Civil Division of the Superior Court or the Supreme Court.

3 § 102. ALLOWANCE CONCLUSIVE AS TO EXECUTION

4 The allowance of a will ~~of real or personal estate~~ shall be conclusive as to
5 its due execution and validity.

6 § 103. CUSTODIAN OF WILL TO DELIVER

7 If a person has the custody of a will, within 30 days after learning of the
8 death of the testator, the custodian shall deliver the will to ~~a probate division of~~
9 ~~the superior court~~ the Probate Division of the Superior Court where venue lies
10 or to the executor named in the will.

11 § 104. EXECUTOR TO PRESENT WILL AND ACCEPT OR REFUSE

12 TRUST

13 (a) A person named executor in a will ~~and~~ who has knowledge thereof shall
14 file a death certificate and petition to open the decedent's estate in the ~~probate~~
15 ~~division of the superior court~~ Probate Division of the Superior Court where
16 venue lies with reasonable promptness.

17 (b) ~~If the person so named learns of the nomination prior to the testator's~~
18 ~~death, the petition shall be filed within 30 days of learning of the death. If~~
19 ~~learned after the testator's death, the petition shall be filed within 30 days of~~
20 ~~learning of being named executor. The person shall notify the court in the~~
21 ~~petition, or in another writing if a petition has been previously filed, whether~~

1 ~~the appointment as executor will be accepted by that person. A petition to~~
2 ~~open an estate need not be filed when no assets require probate administration.~~
3 The named executor may file with the court an original death certificate and
4 will without filing a petition to open an estate by notifying the court that no
5 assets appear to require probate administration.

6 § 105. ~~PENALTY~~

7 ~~Unless he or she gives a satisfactory excuse to the probate division of the~~
8 ~~superior court a person who neglects a duty required in sections 103 and 104 of~~
9 ~~this title shall forfeit \$10.00 for each month he or she so neglects after the~~
10 ~~30 days mentioned therein, to be recovered with costs in an action on this~~
11 ~~statute by any person having an interest in the will. [Repealed.]~~

12 § 106. ~~PERSON RETAINING WILL MAY BE COMMITTED~~ DUTY OF
13 CUSTODIAN OF WILL; LIABILITY

14 ~~If, after the death of the testator, a person having the custody of a will~~
15 ~~neglects without reasonable cause to deliver the same to a probate division of~~
16 ~~the superior court where venue lies, after order by the court and failure to~~
17 ~~deliver it, the court may issue a warrant committing the person to the custody~~
18 ~~of the commissioner of corrections until compliance is given.~~

19 (a) After the death of a testator and on request of an interested person, a
20 person having custody of a will of the testator shall deliver it with reasonable
21 promptness to an appropriate court. A person who intentionally refuses or fails

1 to deliver a will after being ordered to do so by the court in a proceeding
2 brought for the purpose of compelling delivery may be subject to proceedings
3 for civil contempt under 12 V.S.A. § 122.

4 (b) A person who suffers damages as a result of another person's
5 intentional failure to deliver a will shall have an action in Superior Court for
6 damages and injunctive relief.

7 § 107. ~~COURT TO SCHEDULE HEARING ON~~ ALLOWANCE OF WILL;
8 CUSTODY OF PROPERTY

9 ~~(a) When a will is delivered to a probate division of the superior court~~
10 ~~accompanied by a petition to commence a probate proceeding, the court shall~~
11 ~~schedule a hearing and notice shall be given as provided by the rules of probate~~
12 ~~procedure.~~ If consents are filed by all the heirs at law and surviving spouse, a
13 will may be allowed without hearing. If consents are not obtained, the court
14 shall schedule a hearing and notice shall be given as provided by the Rules of
15 Probate Procedure.

16 (b) Objections to allowance of the will must be filed in writing no less than
17 three business days prior to the hearing. In the event that no timely objections
18 are filed, the will may be allowed without hearing if it meets criteria set out in
19 section 108 of this title.

20 (c) After delivery of the will to the court, the ~~The~~ person named as executor
21 in a ~~the~~ will shall have power after delivery of the will to the court, and

1 pending allowance thereof, to assume custody of the estate for its preservation,
2 ~~unless or~~ until a special or other administrator is appointed and qualifies.

3 § 108. ~~HOW PROVED, WHEN UNCONTESTED~~ SELF-PROVED WILLS

4 ~~If a person does not appear to contest the allowance of a will at the time~~
5 ~~appointed, the court may allow the will on the testimony of only one of the~~
6 ~~subscribing witnesses, if the witness testifies that the will was executed as~~
7 ~~provided in chapter 1 of this title. If the allowance of the instrument is~~
8 ~~consented to in writing by the surviving spouse of the deceased, if any, and by~~
9 ~~all the heirs at law and next of kin, it may be allowed without testimony. A~~
10 will may be self-proved as to its execution, by the sworn acknowledgement of
11 the testator and the witnesses, made before a notary public or other official
12 authorized to administer oaths in the place of execution in the following
13 circumstances:

14 (1) The testator signed the instruction as the testator's will or expressly
15 directed another to sign for the testator in the presence of two witnesses.

16 (2) The signing was the testator's free and voluntary act for the purposes
17 expressed in the will.

18 (3) Each witness signed at the request of the testator, in the testator's
19 presence, and in the presence of the other witness.

1 (4) To the best knowledge of each witness at the time of the signing, the
2 testator was at least 18 years of age and was of sound mind and under no
3 constraint or undue influence.

4 § 109. ~~WHEN WITNESS DOES NOT RESIDE IN STATE~~

5 ~~If none of the subscribing witnesses resides in the state at the time of the~~
6 ~~death of the testator, the court may admit the testimony of other witnesses to~~
7 ~~prove the sanity of the testator and the execution of the will although the~~
8 ~~subscribing witnesses are living. As evidence of the execution of the will, such~~
9 ~~court may admit proof of the handwriting of the testator and of the subscribing~~
10 ~~witnesses in cases where the names of such witnesses are subscribed to a~~
11 ~~certificate stating that the will was executed as provided in chapter 1 of this~~
12 ~~title. [Repealed.]~~

13 § 110. ABSENCE OF WITNESS, PROOF

14 When it appears to the court that a will cannot be proven as otherwise
15 provided by law, because one or more ~~or all~~ of the subscribing witnesses ~~to the~~
16 ~~will, at the time the will is offered for probate, are serving in or present with~~
17 ~~the armed forces of the United States or its allies or as merchant seamen, or by~~
18 ~~reason of such service are dead or mentally or physically~~ are unavailable or
19 incapable of testifying ~~or otherwise unavailable~~, the court may admit the will
20 to probate upon the testimony in person or by ~~deposition~~ affidavit of at least
21 ~~two~~ one credible disinterested ~~witnesses~~ witness that the signature to the will is

1 in the handwriting of the person whose will it purports to be, or upon other
2 sufficient proof of ~~such~~ the handwriting, and the will on its face complies with
3 other legal requirements. ~~The foregoing provision~~ This section shall not
4 preclude the court, in its discretion, from requiring ~~in addition the~~ additional
5 testimony ~~in person or by deposition~~ of any available subscribing witness or
6 proof of ~~such~~ other pertinent facts and circumstances ~~as~~ that the court ~~may~~
7 ~~deem~~ deems necessary to admit the will to probate.

8 § 111. NOTICE TO BENEFICIARIES

9 Within 30 days after the allowance of a will ~~containing a devise or a~~
10 ~~bequest,~~ the court shall mail, postage paid, a written notice thereof to each
11 beneficiary, devisee, or legatee named in the will.

12 § 112. WILLS MADE OUT OF STATE

13 (a) A last will and testament executed without this ~~state~~ State in the mode
14 prescribed by the law, either of the place where executed or of the testator's
15 domicile, shall be deemed to be legally executed and shall be of the same force
16 and effect as if executed in the mode prescribed by the laws of this ~~state~~ State,
17 provided that such last will and testament is in writing and subscribed by the
18 testator.

19 (b) When a will is allowed pursuant to subsection (a) of this section, the
20 Probate Division of Superior Court shall grant letters testamentary or letters of
21 administration with the will annexed, and such letters shall extend to all the

1 estate of the testator in this State. After the payment of enforcement debts and
2 expenses of administration, the estate shall be disposed of according to the will
3 so far as the will may operate upon it, and the residue shall be disposed of as is
4 provided in case of estates in this State belonging to persons who are residents
5 of another state or country.

6 § 113. WILLS ALLOWED OUT OF STATE—GENERALLY

7 A will allowed in any other state, or in a foreign country, according to the
8 laws of that state or country, may be the subject of ancillary administration in
9 the ~~probate division of the superior court~~ Probate Division of the Superior
10 Court.

11 § 114. PETITION AND HEARING ON

12 (a) When a will has been allowed in any other state or country, as provided
13 in section 113 of this title, an executor or other person interested may file a
14 petition for ancillary administration. The petition shall contain:

15 (1) A a duly authenticated copy of the decedent's will and the allowance
16 thereof (where probate is required by the laws of such state or country); or

17 (2) A a duly authenticated certificate of the legal custodian of such
18 original will that the same is a true copy and that such will has become
19 operative by the laws of such state or country (where probate is not required by
20 the laws of such state or country); or

1 (3) ~~A~~ a copy of a notarial will in possession of a notary in a foreign state
2 or country entitled to the custody thereof and duly authenticated by such notary
3 (the laws of such state or country requiring that such will remain in the custody
4 of such notary).

5 (b) After receiving a petition for ancillary administration, the ~~probate~~
6 ~~division of the superior court~~ Probate Division of the Superior Court shall
7 schedule a hearing, ~~and notice shall be given, as provided by the rules of~~
8 ~~probate procedure~~ and require notice as provided by the Rules of Probate
9 Procedure. Objections to allowance of the will in Vermont shall be filed in
10 writing no less than 14 business days prior to the hearing. In the event that no
11 objections are filed, the will shall be allowed without hearing.

12 § 115. ORDER FOR FILING

13 If the instrument is allowed in this ~~state~~ State as the last will and testament
14 of the deceased, the copy shall be filed and recorded and the will shall have the
15 same effect as if originally allowed in the same court.

16 § 116. ~~ADMINISTRATION UNDER; ESTATE, HOW DISPOSED OF~~

17 ~~When a will is thus allowed, the probate division of the superior court shall~~
18 ~~grant letters testamentary or letters of administration with the will annexed,~~
19 ~~and such letters shall extend to all the estate of the testator in this state. After~~
20 ~~the payment of just debts and expenses of administration, such estate shall be~~
21 ~~disposed of according to such will so far as such will may operate upon it and~~

1 ~~the residue shall be disposed of as is provided in case of estates in this state~~
2 ~~belonging to persons who are inhabitants of another state or country.~~

3 [Repealed.]

4 ~~§ 117. CONSTRUCTION BY SUPERIOR COURT AND SUPREME~~
5 ~~COURT~~

6 ~~In cases where the terms of a will are doubtful or in dispute, a person~~
7 ~~interested in the estate, either as legatee, devisee or heir at law, may bring a~~
8 ~~complaint before the superior court to have the will construed. The superior~~
9 ~~judge, or the supreme court on appeal, shall proceed to construe the will, and~~
10 ~~that decision shall be binding on parties who are served with process and all~~
11 ~~who appear in the cause, notwithstanding it appears that others may at some~~
12 ~~future time become interested under the will. [Repealed.]~~

13 § 118. REFERRAL TO SUPERIOR COURT

14 The Probate Division of the Superior Court may, on its own motion or upon
15 motion of an interested person, refer a matter directly to the Civil Division of
16 the Superior Court for the purpose of conserving judicial resources. The
17 Probate Division shall consult with and obtain the consent of the Civil Division
18 before making a transfer pursuant to this section.

1 Sec. 3. 14 V.S.A. chapter 42 is amended to read:

2 CHAPTER 42. DESCENT AND SURVIVORS' RIGHTS

3 Subchapter 1. General Provisions

4 § 301. INTESTATE ESTATE

5 (a) Any part of a decedent's estate not effectively disposed of by will
6 passes by intestate succession to the decedent's heirs, except as modified by
7 the decedent's will.

8 (b) A decedent's will may expressly exclude or limit the right of an
9 individual or a class to inherit property. If such an individual or member of
10 such a class survives the decedent, the share of the decedent's intestate estate
11 which would have passed to that individual or member of such a class passes
12 subject to any such limitation or exclusion set forth in the will.

13 (c) Nothing in this section shall preclude the surviving spouse of the
14 decedent from making the election and receiving the benefits provided by
15 section 319 of this title.

16 § 302. DOWER AND CURTESY ABOLISHED

17 The estates of dower and curtesy are abolished.

18 § 303. AFTERBORN HEIRS

19 For purposes of this chapter and chapter 1 of this title relating to wills, an
20 individual in gestation at a particular time is treated as living at that time if the
21 individual lives 120 hours or more after birth.

1 this section, the ~~probate division of the superior court~~ Probate Division of the
2 Superior Court may consider the length of the decedent's marriage; or civil
3 union, the sentimental and monetary value of the property, and the source of
4 the decedent's interest in the property.

5 § 313. SURVIVING SPOUSE; VESSEL, SNOWMOBILE, OR
6 ALL-TERRAIN VEHICLE

7 Whenever the estate of a decedent who dies intestate consists principally of
8 a vessel, snowmobile, or all-terrain vehicle, the surviving spouse shall be
9 deemed to be the owner of the vessel, snowmobile, or all-terrain vehicle, and
10 title to the vessel, snowmobile, or all-terrain vehicle shall automatically pass to
11 the surviving spouse. The surviving spouse may register the vessel,
12 snowmobile, or all-terrain vehicle pursuant to 23 V.S.A. § 3816.

13 § 314. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE

14 (a) The balance of the intestate estate not passing to the decedent's
15 surviving spouse under section 311 of this title passes to the decedent's
16 descendants by right of representation.

17 (b) If there is no taker under subsection (a) of this section, the intestate
18 estate passes in the following order:

19 (1) to the decedent's parents equally if both survive or to the surviving
20 parent;

1 (2) to the decedent's siblings and the descendants of any deceased
2 siblings by right of representation;

3 (3) one-half of the intestate estate to the decedent's paternal
4 grandparents equally if they both survive or to the surviving paternal
5 grandparent and one-half of the intestate estate to the decedent's maternal
6 grandparents equally if they both survive or to the surviving maternal
7 grandparent and if decedent is survived by a grandparent, or grandparents on
8 only one side, to that grandparent or those grandparents;

9 (4) in equal shares to the next of kin in equal degree.

10 (c) If property passes under this section by right of representation, the
11 property shall be divided into as many equal shares as there are children or
12 siblings of the decedent, as the case may be, who either survive the decedent or
13 who predecease the decedent leaving surviving descendants.

14 § 315. PARENT AND CHILD RELATIONSHIP

15 For the purpose of intestate succession, an individual is the child of his or
16 her parents, regardless of their marital status, but a parent shall not inherit from
17 a child unless the parent has openly acknowledged the child and not refused to
18 support the child. The parent and child relationship may be established in
19 parentage proceedings under 15 V.S.A. chapter 5, subchapter 3A ~~of chapter 5~~
20 ~~of Title 15~~.

1 § 316. ~~SUPPORT OF~~ ALLOWANCES FOR SURVIVING SPOUSE AND
2 FAMILY DURING SETTLEMENT ADMINISTRATION

3 The ~~probate division of the superior court~~ Probate Division of the Superior
4 Court may make reasonable allowance for the necessary expenses of support
5 and maintenance of the surviving spouse and minor children or either,
6 constituting the family of a decedent, out of the personal estate or the income
7 of real or personal estate from date of death until settlement of the estate, but
8 for no longer a period than until their shares in the estate are assigned to them
9 or, in case of an insolvent estate, for not more than eight months after
10 administration is granted. This allowance may take priority, in the discretion
11 of the court, over debts of the estate.

12 § 317. ALLOWANCE TO CHILDREN BEFORE PAYMENT OF DEBTS

13 ~~When a person dies leaving children under 18 years of age, an~~ The court
14 may make reasonable allowance ~~may be made~~ for the necessary expenses of
15 support and maintenance of such any children of the decedent until they
16 ~~become~~ reach 18 years of age. The court may order the executor or
17 administrator to retain sufficient estate assets for that purpose, except where
18 some provision is made by will for their support. Such allowance shall be
19 made before any distribution of the estate among creditors, heirs, or
20 beneficiaries by will.

1 § 318. ALLOWANCE TO CHILDREN ~~BEFORE~~ AFTER PAYMENT OF
2 DEBTS

3 Before any partition or division of an estate among the heirs or beneficiaries
4 by will, an allowance may be made for the necessary expenses of ~~the~~ support
5 and maintenance of the children of the decedent ~~under~~ until they reach 18 years
6 of age ~~until they arrive at that age~~. The ~~probate division of the superior court~~
7 Probate Division of the Superior Court may order the executor or administrator
8 to retain sufficient estate assets for that purpose, except where some provision
9 is made by will for their support.

10 § 319. ~~WAIVER~~ ELECTIVE SHARE OF WILL BY SURVIVING SPOUSE;
11 NOTICE OF RIGHTS

12 (a) ~~A~~ Subject to subsection (d) of this section, a surviving spouse may elect
13 to waive the provisions of the decedent's will and in lieu thereof elect to take
14 one-half of the balance of the probate estate, after the payment of allowances,
15 claims, and expenses.

16 (b) The surviving spouse must be living at the time this election is made. ~~If~~
17 An election under this section may be signed on behalf of the surviving spouse
18 ~~is mentally disabled and cannot make the election personally,~~ by a guardian, an
19 agent, or ~~attorney in fact~~ an attorney-in-fact under a ~~valid durable~~ power of
20 attorney ~~may do so~~ that:

21 (1) expressly grants the authority to make the election; or

1 (2)(A) grants the agent or attorney-in-fact the authority to act in the
2 management and disposition of the principal's property that is as broad or
3 comprehensive as the principal could exercise for himself or herself; and

4 (B) does not expressly exclude the authority to make the election.

5 (c) An agent or attorney-in-fact may petition the Probate Division of the
6 Superior Court to determine whether a power of attorney described in
7 subdivision (b)(2) grants the agent or attorney-in-fact authority that is as broad
8 or comprehensive as that which the principal could exercise for himself or
9 herself.

10 (d) A surviving spouse may not elect against a deceased spouse's will
11 under this section if the surviving spouse has waived the right to elect against
12 the deceased spouse's will pursuant to section 323 of this title.

13 (e)(1) The court shall provide the surviving spouse with a notice of the
14 rights of the surviving spouse no later than 30 days from the filing of the initial
15 inventory.

16 (2) Unless otherwise ordered by the court, a surviving spouse shall file
17 with the court a written election to waive the provisions of a decedent's will
18 within four months of the later of the following dates:

19 (A) the date of service of the notice of rights of surviving spouse; or

20 (B) the date of service of the inventory.

1 (f) Upon the filing of any subsequent or amended inventory or any
2 accounting that reports previously undisclosed property owned by the decedent
3 as of the date of death, the surviving spouse shall have 30 days from the date of
4 service of the filing to elect against the newly reported property, unless
5 otherwise ordered by the court.

6 § 320. EFFECT OF DIVORCE ORDER

7 A final divorce or dissolution order from any state shall ~~have the effect of~~
8 ~~nullifying~~ nullify a gift by will ~~or inheritance by operation of law~~ to an
9 individual who was the decedent's spouse at the time the will was executed
10 and any nomination of the spouse as executor, executrix, trustee, guardian, or
11 other fiduciary as named in the will, if the decedent was no longer married to
12 or in a civil union with that individual at the time of death, unless ~~his or her~~ the
13 decedent's will specifically states to the contrary.

14 § 321. CONVEYANCE TO DEFEAT SPOUSE'S INTEREST

15 A voluntary transfer of any property by an individual during a marriage or
16 civil union and not to take effect until at or after the individual's death, made
17 without adequate consideration and for the primary purpose of defeating a
18 surviving ~~spouse in a claim to a~~ spouse's right to claim the survivor's intestate
19 or elective share of the decedent's property so transferred, shall be void and
20 inoperative to bar the claim. ~~The,~~ unless the surviving spouse waived the
21 survivor's right to make a claim against the deceased spouse's estate or the

1 property transferred pursuant to section 323 of this title. If the surviving
2 spouse has not signed a waiver of spousal rights pursuant to section 323 of this
3 title, then the decedent shall be deemed at the time of his or her death to be the
4 owner and seised of an interest in such of the property sufficient for the
5 purpose of assigning and setting out and the court may:

6 (1) increase the surviving spouse's share of the decedent's probate estate
7 in an amount the court deems reasonable to account for the right the surviving
8 spouse would otherwise have had in the property so transferred; or

9 (2) if the assets of the decedent's probate estate are insufficient to
10 account for the right the surviving spouse would otherwise have had in the
11 property, then order any other equitable relief the court deems appropriate.

12 § 322. UNLAWFUL KILLING AFFECTING INHERITANCE

13 Notwithstanding sections 311 through 314 of this title or provisions
14 otherwise made, in any case in which an individual is entitled to inherit or
15 receive property under the last will of a decedent, or otherwise, such
16 individual's share in the decedent's estate shall be forfeited and shall pass to
17 the remaining heirs or beneficiaries of the decedent if the individual
18 intentionally and unlawfully kills the decedent. In any proceedings to contest
19 the right of an individual to inherit or receive property under a will or
20 otherwise, the record of that individual's conviction of intentionally and
21 unlawfully killing the decedent shall be admissible in evidence and shall

1 conclusively establish that such individual did intentionally and unlawfully kill
2 the decedent.

3 § 323. WRITTEN WAIVER OF SPOUSAL RIGHTS

4 (a) At any time before or during a marriage, a spouse may waive the right
5 to an elective share of a deceased spouse's estate, waive the right to a
6 homestead or other allowance, and waive any other spousal rights or interest in
7 property, in whole or in part, by a written instrument signed by the waiving
8 spouse.

9 (b) A written waiver of spousal rights is presumed to be valid unless the
10 party contesting the waiver demonstrates that:

11 (1) the waiver was not voluntary;

12 (2) the waiver was unconscionable when signed or is unconscionable in
13 its application due to a material change in circumstances that arose subsequent
14 to the execution of the instrument through no fault or no action of the
15 contesting party;

16 (3) before signing the waiver, the waiving spouse was not provided fair
17 and reasonable disclosure of the property and financial obligations of the
18 decedent; or

19 (4) before signing the waiver, the waiving spouse did not have an
20 opportunity for meaningful access to independent counsel.

1 (c) A waiver under this section may be signed on behalf of a waiving
2 spouse by a guardian or by an agent or an attorney-in-fact under a power of
3 attorney that:

4 (1) expressly grants the authority to make the election; or

5 (2)(A) grants the agent or attorney-in-fact the authority to act in the
6 management and disposition of the principal's property that is as broad or
7 comprehensive as the principal could exercise for himself or herself; and

8 (B) does not expressly exclude the authority to make the election.

9 (C) An agent or attorney-in-fact may petition the Probate Division of
10 the Superior Court to determine whether a power of attorney described in
11 subdivision (c)(2) grants the agent or attorney-in-fact authority that is as broad
12 or comprehensive as that which the principal could exercise for himself or
13 herself.

14 Subchapter 3. Descent, Omitted Issue, and Lapsed Legacies

15 § 331. DEGREES; HOW COMPUTED: KINDRED OF HALF-BLOOD

16 Kindred of the half-blood shall inherit the same share they would inherit if
17 they were of the whole blood.

18 § 332. SHARE OF AFTERBORN CHILD

19 When a child of a testator is born after the making of a will and provision is
20 not ~~therein~~ in the will made for that child, he or she shall have the same share
21 in the estate of the testator as if the testator had died intestate unless it is

1 apparent from the will that it was the intention of the testator that provision
2 should not be made for the child.

3 § 333. SHARE OF CHILD OR DESCENDANT OF CHILD OMITTED
4 FROM WILL

5 When a testator omits to provide in ~~his or her~~ the testator's will for any of
6 ~~his or her children~~ child of the testator, or for the descendants of a deceased
7 child, and it appears that the omission was made by mistake or accident, the
8 child or descendants, as the case may be, shall have and be assigned the same
9 share of the estate of the testator as if the testator had died intestate.

10 § 334. AFTERBORN AND OMITTED CHILD; FROM WHAT PART OF
11 ESTATE SHARE TAKEN

12 When a share of a testator's estate is assigned to a child born after the
13 making of a will, or to a child or the descendant of a child omitted in the will,
14 the share shall be taken first from the estate not disposed of by the will, if there
15 is any. If that is not sufficient, so much as is necessary shall be taken from the
16 devisees or legatees in proportion to the value of the estate they respectively
17 receive under the will. If the obvious intention of the testator, as to some
18 specific devise, legacy, or other provision in the will, would thereby be
19 defeated, the specific devise, legacy, or provision may be exempted from such
20 apportionment and a different apportionment adopted in the discretion of the
21 court.

1 § 335. BENEFICIARY DYING BEFORE TESTATOR; DESCENDANTS
2 TO TAKE

3 When a testamentary gift is made to a child or other kindred of the testator,
4 and the designated beneficiary dies before the testator, leaving one or more
5 descendants who survive the testator, such descendants shall take the gift that
6 the designated beneficiary would have taken if ~~he or she~~ the designated
7 beneficiary had survived the testator, unless a different disposition is required
8 by the will.

9 § 336. INDIVIDUAL ABSENT AND UNHEARD OF; SHARE OF ESTATE

10 If an individual entitled to a distributive share of the estate of a decedent is
11 absent and unheard of for six years, two of which are after the death of the
12 decedent, the ~~probate~~ court in which the decedent's estate is pending may order
13 the share of the absent individual distributed in accordance with the terms of
14 the decedent's will or the laws of intestacy as if such absent individual had not
15 survived the decedent. If the absent individual proves to be alive, he or she
16 shall be entitled to the share of the estate notwithstanding prior distribution,
17 and may recover in an action on this statute any portion thereof which any
18 other individual received under order. Before an order is made for the
19 payment or distribution of any money or estate as authorized in this section,
20 notice shall be given as provided by the Vermont Rules of Probate Procedure.

1 § 337. REQUIREMENT THAT INDIVIDUAL SURVIVE DECEDENT FOR
2 120 HOURS

3 Except as provided in the decedent's will, an individual who fails to survive
4 the decedent by 120 hours is deemed to have predeceased the decedent for
5 purposes of homestead allowance, exempt property, intestate succession, and
6 taking under decedent's will, and the decedent's heirs and beneficiaries shall
7 be determined accordingly. If it is not established by clear and convincing
8 evidence that an individual who would otherwise be an heir or beneficiary
9 survived the decedent by 120 hours, it is deemed that the individual failed to
10 survive for the required period. This section is not to be applied if its
11 application would result in escheat.

12 § 338. DISTRIBUTION; ORDER IN WHICH ASSETS APPROPRIATED;
13 ABATEMENT

14 (a)(1) Except as provided in subsection (b) of this section, shares of
15 distributees given under a will abate, without any preference or priority as
16 between real and personal property, in the following order:

- 17 (A) property not disposed of by the will;
18 (B) residuary devises and bequests;
19 (C) general devises and bequests;
20 (D) specific devises and bequests.

1 members of the town where the deceased last resided, if an inhabitant of the
2 State, or of the town in which estate lies, if the absent person resided out of the
3 State, may file a petition, on behalf of the town, with the Probate Division of
4 the Superior Court for a hearing in accordance with the Rules of Probate
5 Procedure.

6 § 683. ESCHEAT, PROCEEDS FROM SALE

7 If sufficient cause is not shown to the contrary, at the time appointed for
8 that purpose, the court shall order and decree that the estate of the deceased in
9 the ~~state~~ State, after the payment of just debts and charges, shall escheat. Such
10 court shall assign the personal estate to the town where such deceased was last
11 an inhabitant in the ~~state~~ State and the real estate to the towns in which the
12 same is situated. If he or she were never an inhabitant of the ~~state~~ State, the
13 whole estate shall be assigned to the towns where the same is located. ~~Such~~
14 The estate shall be for the use of schools in the towns respectively and shall be
15 managed and disposed of like other property appropriated to the use of the
16 town school districts. Any property decreed to a town by virtue of this chapter
17 or subsequently conveyed to an incorporated school district within such town
18 for the use of its schools may be sold without restriction, provided the proceeds
19 shall be expended for the use of the schools of the town.

1 § 684. RIGHTS OF HEIR SUBSEQUENTLY APPEARING

2 If a devisee, legatee, heir, widow, or other person, entitled to ~~such~~ some
3 portion or all of an estate, appears within 17 years from the date of ~~such~~ the
4 decree and files a claim with the ~~probate division of the superior court~~ Probate
5 Division of the Superior Court which made ~~such~~ the decree, and establishes the
6 claim to ~~such~~ the estate, he or she shall have possession of the same to the
7 extent of the claim, or, if sold, the town shall be accountable to him or her for
8 the avails, after deducting reasonable charges for the care of the estate. If the
9 claim is not made within the time mentioned, it shall be barred.

10 Sec. 5. 14 V.S.A. chapter 61 is amended to read;

11 CHAPTER 61. EXECUTORS AND ADMINISTRATORS

12 Subchapter 1. General Provisions

13 § 902. WILL ALLOWED; LETTERS TO EXECUTOR

14 When a will has been allowed, the ~~probate division of the superior court~~
15 Probate Division of the Superior Court shall issue letters ~~testamentary thereon~~
16 of administration to the person named executor ~~therein~~ or administrator if the
17 person accepts ~~the trust~~ appointment and gives a ~~bond as required by law~~ any
18 required bond.

19 § 903. ADMINISTRATION; TO WHOM GRANTED

20 If an executor is not named in the will, or if a person dies intestate,
21 ~~administration shall be granted~~ appointments to administer the estate may be
22 made in the following manner:

1 (1) To the surviving ~~husband or wife, as the case may be,~~ spouse or next
2 of kin, or both, or ~~to such~~ the person as such surviving husband or wife
3 nominated by the surviving spouse or next of kin ~~request to have appointed;~~

4 (2) If ~~such~~ the surviving husband or wife, as the case may be, spouse or
5 next of kin or the ~~persons selected~~ person nominated by them are is unsuitable,
6 or if the ~~widow~~ surviving spouse or the next of kin ~~neglects for 30 days~~ does
7 not within a reasonable period of time after the death of the person ~~to~~ apply for
8 letters of administration or to request that nominate another person to whom
9 letters of administration may be granted to some other person, it may be
10 granted to, the court may grant letters of administration to one or more of the
11 principal creditors, if competent and willing to serve;

12 (3) If there is not ~~such~~ a creditor who is competent and willing to serve,
13 ~~the same~~ letters of administration may be ~~committed~~ issued to ~~such other~~
14 another person as appointed by the probate division of the superior court may
15 appoint; Probate Division of the Superior Court in its discretion.

16 (4) ~~To such person as to the court shall seem suitable upon application~~
17 ~~of the reputed owner of land formerly owned by such deceased person, in case~~
18 ~~the title to such land is not clear~~ If the appointment is to enable a quiet title
19 action or another action to clear title to lands, the court may appoint a suitable
20 person as the administrator for that purpose upon application of the reputed
21 owner of the land formerly owned by the decedent.

1 § 904. NONRESIDENT EXECUTOR OR ADMINISTRATOR OR
2 ~~EXECUTOR TO BE RESIDENT OF STATE; EXCEPTIONS;~~
3 AGENT

4 (a) In all cases where the principal administration is in this ~~state~~ State, the
5 ~~probate division of the superior court~~ Probate Division of the Superior Court
6 shall ~~not~~ appoint a ~~trustee not named in a will nor~~ an executor or administrator
7 who is not domiciled in this ~~state at the time of appointment, nor an executor~~
8 ~~who is not domiciled in this state, except in~~ State only at the the discretion of
9 the court; ~~provided, however, that the court shall appoint an administrator who~~
10 ~~is not domiciled in the state when requested so to do by the surviving spouse,~~
11 ~~the surviving children of lawful age or the surviving parent or parents or a~~
12 ~~guardian, on motion in that order of sequence.~~

13 (b) ~~In case of the appointment of a nonresident executor, administrator or~~
14 ~~trustee, the person appointed~~ Any nonresident estate fiduciary shall forthwith
15 designate in writing some person resident in the state from which letters
16 ~~testamentary, of administration or trusteeship are granted, upon whom a~~
17 resident of this State who accepts appointment as the resident agent of the
18 nonresident estate fiduciary and agrees to accept service of legal process ~~may~~
19 ~~be made as agent of the nonresident executor, administrator or trustee~~ and
20 other communications on behalf of the executor or administrator. The
21 appointment and acceptance shall be filed with the court. Service of legal

1 process against the nonresident ~~administrator, executor or trustee may be made~~
2 ~~by delivering to the agent a true and attested copy of the process with the~~
3 ~~officer's return thereon~~ executor or administrator may be accomplished by
4 serving the resident agent.

5 § 905. APPEAL TO THE CIVIL DIVISION OF THE SUPERIOR COURT

6 ~~Upon appeal from~~ If any person appeals to the Civil Division of the
7 Superior Court an order appointing an ~~administrator, if executor or~~
8 ~~administrator and~~ the appeal is sustained, the ~~superior court~~ Civil Division of
9 the Superior Court shall ~~fill the vacancy by the immediate appointment of a~~
10 ~~suitable person, and the judgment and appointment shall be certified to the~~
11 ~~probate court. When the administrator files the bond required, the probate~~
12 ~~court shall grant letters of administration~~ appoint another suitable person as
13 executor or administrator, and certify the judgment and subsequent
14 appointment to the Probate Division of the Superior Court. The Probate
15 Division shall set bond and, after the required bond is filed by the executor or
16 administrator, grant letters of administration.

17 § 906. BOND; AMOUNT, CONDITIONS

18 ~~Before letters testamentary or of administration are issued, the person to be~~
19 ~~appointed shall give a bond in such reasonable sum as the probate division of~~
20 ~~the superior court directs, with one or more sufficient sureties, conditioned as~~
21 ~~follows~~ An executor or administrator shall give a bond to secure the executor's

1 or administrator's performance of the executor's or administrator's duties. The
2 Probate Division shall set the amount of the bond and may order that the bond
3 have sureties. The bond shall be for the security and benefit of all interested
4 persons, except where a bond is to be taken to the adverse party, and shall be
5 filed before the court issues letters of administration. The court shall set the
6 conditions of any bond, which shall include the following:

7 (1) ~~To~~ to make and return an inventory to the ~~probate division of the~~
8 ~~superior court~~ Probate Division within ~~30~~ 60 days ~~a true and perfect inventory~~
9 ~~of the goods, chattels, rights, credits and estate of the deceased, which shall~~
10 ~~come into the possession or knowledge of the person appointed, or into the~~
11 ~~possession of any other person for the person appointed~~ as required by law and
12 the rules of the court;

13 (2) ~~To~~ to administer according to law, ~~if an executor, according to the~~
14 ~~will of the testator, all goods, chattels, rights, credits and estate which shall at~~
15 ~~any time come into the possession of the person appointed, or into the~~
16 ~~possession of any other person for the person appointed, and of the same, pay~~
17 ~~and discharge all debts, legacies and charges on the same, or dividends thereon~~
18 ~~as shall be decreed by the probate division of the superior court~~ and the
19 decedent's will, if any, all property comprising the decedent's estate, whether
20 in the possession of the executor or administrator or others for the benefit of
21 the executor or administrator, and discharge all debts, legacies, and charges;

1 (3) ~~To~~ to render a ~~true and just~~ an account of administration to the
2 ~~probate division of the superior court~~ Probate Division within one year and at
3 any other time when required by the court;

4 (4) ~~To~~ to pay to the ~~state treasurer~~ State of Vermont all inheritance and
5 transfer taxes which the person appointed is required to pay by the provisions
6 of 32 V.S.A. chapters 181 and 183 ~~of Title 32~~ and to perform all other duties
7 required by those chapters; and

8 (5) ~~To~~ to perform all orders and decrees of the ~~probate division of the~~
9 ~~superior court~~ Probate Division.

10 § 907. ~~RESIDUARY LEGATEE AS EXECUTOR, BOND; BOND~~

11 ~~PROVISION IN WILL; FURTHER BOND~~

12 ~~(a) Instead of the bond required in section 906 of this title, an executor who~~
13 ~~is residuary legatee may give a bond in a sum and with those sureties as the~~
14 ~~probate division of the superior court directs, with the conditions only to pay~~
15 ~~the debts and legacies of the testator, and to return to the probate division of~~
16 ~~the superior court within 30 days a true and perfect inventory under oath~~
17 ~~according to the executor's best knowledge, information and belief of the~~
18 ~~goods, chattels, rights, credits and estate of the deceased which shall come to~~
19 ~~the executor's possession or knowledge, or to the possession of any other~~
20 ~~person for the executor.~~

1 ~~(b) If the testator by will directs that no bond, or only the individual bond~~
2 ~~of the executor be required, instead of the bond prescribed in section 906 of~~
3 ~~this title, an individual bond may be given as directed in the will. A bond shall~~
4 ~~also be given in a sum and with those sureties as the probate division of the~~
5 ~~superior court directs, with the conditions only to pay the debts of the testator~~
6 ~~and return to the probate division of the superior court a true inventory under~~
7 ~~oath, according to the executor's best knowledge, information and belief, of~~
8 ~~the real estate and all the goods, chattels, rights and credits of the deceased~~
9 ~~coming to the executor's possession or knowledge.~~

10 ~~(e) The probate division of the superior court may require of the executor a~~
11 ~~further bond in case of a subsequent change in circumstances, and for other~~
12 ~~sufficient cause with the second, third, and fourth conditions named in section~~
13 ~~906 of this title. [Repealed.]~~

14 § 908. BONDS OF JOINT ADMINISTRATORS AND EXECUTORS

15 When two or more persons are appointed as executors or administrators, the
16 ~~probate court~~ Probate Division of the Superior Court may take a separate bond
17 from each, with or without sureties, or a joint bond with or without sureties
18 from any or all.

19 § 909. EXECUTOR REFUSING TRUST, OR NOT GIVING BOND

20 A person named as an executor in a will who refuses to accept ~~the trust~~
21 appointment or neglects for 20 days to give a bond ~~for 20 days after the~~

1 ~~probate of such will shall not intermeddle or act as executor. In case of such~~
2 ~~refusal to accept or neglect to give a bond, the probate division of the superior~~
3 ~~court~~ If the person refuses to accept or neglects to give a bond, the Probate
4 Division may grant letters testamentary to the other executors of administration
5 to any other named executor who ~~are~~ is capable and willing to accept the trust
6 the appointment and gives bond. ~~If the other executors will not give a bond,~~
7 ~~administration, with the will annexed, shall be granted to the person who~~
8 ~~would have been entitled thereto had the testator died intestate~~ named
9 executors fail to accept the appointment or give a bond, the court shall grant
10 letters of administration with the will annexed to one or more suitable persons
11 who would have would have qualified to be appointed as administrator had the
12 testator died intestate.

13 § 910. WHEN EXECUTOR IS A MINOR

14 When a person named as executor in a will is under age at the time of
15 proving ~~such~~ the will, issuance of letters of administration with the will
16 ~~annexed shall be granted during the minority of the executor as in cases of~~
17 ~~intestacy, unless there is~~ may be granted to another executor named in such the
18 ~~will, who accepts the trust and gives a bond. In such case, the executor who~~
19 ~~gives a bond shall have letters testamentary and shall administer the estate until~~
20 ~~the minor is of age, when he may be admitted, on giving a bond, as joint~~
21 ~~executor~~ appointment and gives the required bond, or to another suitable

1 person if he or she fails to accept appointment or to post bond. A minor who
2 attains the age of legal majority during the estate administration shall not
3 displace the incumbent executor or administrator, but if a vacancy occurs
4 during administration, the former minor may apply to the court for
5 appointment as successor executor or administrator.

6 § 911. ~~EXECUTOR OF EXECUTOR NOT TO ADMINISTER FIRST~~
7 ~~ESTATE~~

8 ~~The executor of an executor shall not, as such, administer the estate of the~~
9 ~~first testator. [Repealed.]~~

10 § 912. ~~MARRIED WOMAN~~

11 ~~A married woman may be executrix or administratrix, and the marriage of a~~
12 ~~single woman shall not affect her authority to so act under a previous~~
13 ~~appointment. [Repealed.]~~

14 § 913. ~~DEATH OR REMOVAL OF EXECUTOR OR ADMINISTRATOR~~

15 ~~When an executor or administrator dies, resigns, is removed or his or her~~
16 ~~the executor's or administrator's authority is otherwise extinguished, the any~~
17 ~~remaining executor or administrator may execute the trust complete the~~
18 ~~administration unless otherwise provided by the will. If there is no other~~
19 ~~executor or administrator then serving, the court may grant letters of~~
20 ~~administration may be granted to a another suitable person. The executor or~~

1 administrator of an executor or administrator shall not administer the estate of
2 the first decedent.

3 § 914. POWER OF NEW ADMINISTRATOR

4 An administrator appointed in the place of a former executor or
5 administrator shall have the same ~~power~~ authority in settling the estate ~~not~~
6 ~~administered~~ as the former executor or administrator ~~had. He or she may,~~
7 including the authority to prosecute or defend actions commenced by or
8 against the former executor or administrator, and the new administrator may
9 revive actions and have execution on ~~judgment~~ judgments recovered in the
10 name of the former executor or administrator on behalf of the estate.

11 § 915. APPOINTMENT OF ADMINISTRATOR TO ACT WITH
12 SURVIVOR

13 When an executor or administrator dies, resigns, is removed or authority is
14 otherwise extinguished, leaving a remaining executor or administrator,
15 administration may be granted to some suitable person, to serve with the
16 remaining executor or administrator, upon motion of any person interested in
17 the estate of the deceased, ~~as widow, heir, creditor, devisee, legatee or their~~
18 ~~legal representatives.~~

1 § 916. POWERS OF ADMINISTRATOR APPOINTED TO ACT
2 WITH SURVIVOR

3 An executor or administrator appointed under section 915 of this title shall
4 have the same ~~power~~ authority as the remaining executor or administrator ~~has~~
5 ~~and with such executor or administrator~~ and may prosecute or defend actions
6 commenced by or against the former ~~executors or administrators~~ executor or
7 administrator and may revive actions and have execution on judgments
8 recovered in the name of the former executor or administrator on behalf of he
9 estate.

10 § 917. POWER OF REGULATION

11 The ~~probate division of the superior court~~ Probate Division of the Superior
12 Court shall regulate the conduct of persons appearing in proceedings or
13 involved in the administration of estates or other matters within the court's
14 jurisdiction. When it appears to the court that a person has failed to comply
15 with procedures required by law or the ~~rules of probate procedure~~ Rules of
16 Probate Procedure, or that an estate is not being promptly and properly
17 administered, or that a fiduciary is incapable or unsuitable to discharge the
18 trust, the court may give notice of the complaint or omission together with a
19 notice to correct the deficiency or complaint within a specified period of time
20 or cause the party to appear and answer the matter. Notice shall be given as
21 provided by the ~~rules of probate procedure~~ Rules of Probate Procedure. The

1 court may restrain a person from performing specified acts or the exercise of
2 any powers or discharge of any duties of office, or make any other order to
3 secure proper performance of duty. It may exercise the powers of contempt,
4 tax costs including surcharge, order a party to pay to other parties the amount
5 of reasonable expenses, including reasonable attorney's fees, or losses incurred
6 because of an act or omission, and remove or suspend a fiduciary.

7 § 917a. TERMINATION OF APPOINTMENT

8 (a) Termination of appointment of ~~a fiduciary~~ an executor or administrator
9 ends the rights and powers pertaining to the office as conferred by law, the
10 ~~rules of probate procedure~~ Rules of Probate Procedure, or any will or trust.
11 Termination does not discharge ~~a fiduciary~~ an executor or administrator from
12 liability for transactions or omissions occurring before termination, or relieve
13 the ~~fiduciary~~ executor or administrator of the duty to preserve assets subject to
14 the ~~fiduciary's~~ executor's or administrator's control, ~~or to account therefor, and~~
15 ~~to for and~~ deliver assets. Termination does not affect the jurisdiction of the
16 ~~probate division of the superior court~~ Probate Division of the Superior Court
17 over the fiduciary, but terminates the estate fiduciary's authority.

18 (b) The appointment of ~~a fiduciary~~ an executor or administrator is
19 terminated:

20 (1) upon death; ~~or~~

1 (2) when the estate is closed as provided by the ~~rules of probate~~
2 ~~procedure~~ Rules of Probate Procedure; or

3 (3) after resignation upon the appointment of a successor estate
4 fiduciary and delivery of the assets to the successor; or

5 (4) upon removal by the ~~probate division of the superior court~~ Probate
6 Division of the Superior Court.

7 § 918. ONE OF THE COEXECUTORS DISQUALIFIED, OTHERS MAY
8 ACT

9 ~~According to the provisions of this chapter, when executors~~ When
10 coexecutors appointed in a will cannot act as such, those who can act may
11 ~~perform the duties and discharge the trusts required by the will~~ be appointed to
12 administer the estate.

13 § 919. PERSONS UNHEARD FROM FOR FIVE YEARS; SETTLEMENT
14 OF ESTATE

15 When a person is absent and unheard from for five years or when a
16 certificate of presumed death of a person has been issued under 18 V.S.A.

17 § 5219, that person's estate shall be subject to administration by the ~~probate~~
18 ~~division of the superior court~~ Probate Division of the Superior Court. If a will
19 exists, the will shall be presented to the court and may be allowed and the
20 estate closed thereunder. If no will is found, the court having jurisdiction of
21 the estate may grant letters of administration thereof and proceed with the

1 estate as in the settlement of intestate estates, ~~but distribution.~~ Distribution of
2 the estate shall not be made until five years after the granting of administration
3 or letters testamentary. Before granting an order for distribution or for
4 payment of legacies named in any will which may have been allowed, the
5 court shall require from the legatees or distributees a bond or bonds with
6 sufficient surety to the court, which may take into account the likelihood of the
7 reappearance of the person presumed deceased, conditioned to return the
8 amount distributed or paid with lawful interest thereon to the person so absent
9 and unheard from upon reappearance and demand for the same. If the
10 distributee or legatee is unable to give the security ~~aforsaid~~ required by this
11 section, the same shall be placed at interest upon security approved by the
12 court or by the executor or administrator, as the case may be, and the interest
13 shall be paid annually to the distributee or legatee and the estate shall remain at
14 interest until the ~~probate division of the superior court~~ Probate Division of the
15 Superior Court by which the letters of administration or letters testamentary
16 were granted shall order it paid to the legatees or distributees. Upon motion,
17 an order shall not be made permitting payment or distribution without the
18 security ~~hereinbefore provided for~~ required by this section until at least seven
19 years have elapsed since the granting of letters testamentary or of
20 administration on the estate of the supposed decedent.

1 § 920. LIABILITY OF EXECUTOR; RIGHTS ON RETURN

2 After such administration and distribution, the executor or administrator
3 shall not be liable to the person so absent and unheard from in any action for
4 the recovery of ~~such~~ the estate. If ~~such~~ the absent person proves to be alive, he
5 or she shall be entitled to his or her estate notwithstanding ~~the~~ a settlement and
6 distribution ~~aforesaid~~ made pursuant to section 919 of this title, and may bring
7 an action to recover ~~in an action on this statute~~ any portion ~~thereof~~ of the estate
8 which anyone received ~~in such~~ as a result of the settlement and distribution.

9 § 921. PROPERTY OF PERSONS SERVING IN ARMED FORCE –

10 ABSENT PERSONS, CONSERVATOR

11 When a person, hereinafter referred to as an absentee, who is serving in or
12 with the ~~armed forces of the United States~~ U.S. Armed Forces, its allies or as a
13 crew member of a merchant vessel, has been reported or listed as missing,
14 missing in action, interned, or beleaguered, besieged, or captured by an enemy,
15 and has an interest in any property in this ~~state~~ State and has not provided an
16 adequate power of attorney authorizing another to act on the absentee's behalf
17 in regard to the absentee's property, the ~~probate division of the superior court~~
18 Probate Division of the Superior Court may appoint a conservator to take
19 charge of the absentee's estate under the supervision and subject to the further
20 orders of the court. The appointment may be made upon a petition alleging the
21 foregoing facts, showing the necessity of providing for the care of property,

1 and may be brought by any person who would have an interest in the property
2 if the absentee were deceased, or on the court's own motion. The court shall
3 schedule a hearing and notice shall be given as provided by the rules of probate
4 procedure.

5 § 922. POWERS OF CONSERVATOR; BOND

6 The ~~probate division of the superior court~~ Probate Division of the Superior
7 Court shall have full discretionary authority to appoint any suitable person as
8 conservator and may require the conservator to post an adequate surety bond
9 and to make reports the court may deem necessary. The conservator shall have
10 the same powers and authority as the guardian of the property of a minor or
11 incapacitated person.

12 § 923. TERMINATION OF CONSERVATORSHIP

13 At any time upon motion signed by the absentee, or of an attorney-in-fact
14 acting under an adequate power of attorney granted by the absentee, the
15 ~~probate division of the superior court~~ Probate Division of the Superior Court
16 shall direct the termination of the conservatorship and the transfer of all
17 property held thereunder to the absentee or to the designated attorney-in-fact.
18 Likewise, if at any time subsequent to the appointment of a conservator it shall
19 appear that the absentee has died and an executor or administrator has been
20 appointed for the absentee's estate, the court shall direct the termination of the

1 conservatorship, an accounting therein and the transfer of all property of the
2 deceased absentee held thereunder to the executor or administrator.

3 § 924. REVOCATION OF LETTERS OF ADMINISTRATION-WHEN
4 WILL DISCOVERED

5 When, after granting letters of administration of the estate of a person as if
6 dying intestate, a will of the deceased person is allowed, the letters of
7 administration shall be revoked and the powers of the administrator cease, the
8 letters of administration shall be surrendered and an accounting shall be filed
9 as the ~~probate division of the superior court~~ Probate Division of the Superior
10 Court directs.

11 § 925. POWERS OF EXECUTOR OF DISCOVERED WILL

12 In such case, the executor of the will may demand, sue for and collect the
13 goods, chattels, rights and credits of the deceased remaining unadministered,
14 and may prosecute to final judgment actions commenced by the administrator
15 before the revocation of his letters of administration.

16 § 926. REVOCATION OF LETTERS NOT TO AVOID ACTS UNDER
17 THEM

18 Before the revocation of his letters testamentary or of administration, the
19 acts of an executor or administrator shall be valid the same as if revocation had
20 not been made.

1 § 927. EXECUTOR OR ADMINISTRATOR OF DECEASED

2 PARTNER-ACCESS TO BOOKS

3 The executor or administrator of a deceased partner at all times shall have
4 access to and make examination and take copies of the books and papers
5 relating to the partnership business, and at all times shall have the right to
6 examine and make invoices of the property belonging to such partnership. The
7 surviving partner or partners, on request, shall exhibit to him or her all such
8 books, papers and property in their hands or control.

9 § 928. PROBATE DIVISION OF THE SUPERIOR COURT MAY COMPEL

10 COMPLIANCE

11 The ~~probate division of the superior court~~ Probate Division of the Superior
12 Court in which is pending a proceeding for the settlement of the estate of a
13 deceased partner, on motion of the executor or administrator, may cite a
14 surviving partner or partners before it, and, by a proper order or decree, compel
15 the granting of the rights given in section 927 of this title and may enforce an
16 order or decree by issuing its warrant to commit the partner or partners to the
17 custody of the ~~commissioner of corrections~~ Commissioner of Corrections until
18 compliance is given.

19 § 929. BUILDINGS TO BE KEPT IN REPAIR

20 An executor or administrator shall maintain in tenantable repair the houses,
21 buildings, and fences belonging to the estate and deliver the same in such

1 repair to the heirs or devisees when directed by the ~~probate division of the~~
2 ~~superior court~~ Probate Division of the Superior Court.

3 § 930. ESTATE NOT WILLED

4 An executor shall administer the estate of the testator not disposed of
5 by will.

6 § 931. LIMITATION ON CLAIMS OF CREDITORS

7 ~~When a petition to open a decedent's estate is not filed in probate division~~
8 ~~of the superior court within 30 days of death, all~~ All claims against the
9 decedent's estate which arose before the death of the decedent, including
10 claims of the ~~state~~ State and any subdivision thereof, absolute or contingent,
11 liquidated or unliquidated, founded on contract, tort, or other legal basis, if not
12 barred earlier by other statute of limitations, are barred against the estate, the
13 legal representative of the estate, and the heirs and devisees of the decedent,
14 unless presented within ~~three years~~ one year after the decedent's death.

15 Nothing in this section affects or prevents any proceeding to enforce any
16 mortgage, pledge, or other lien upon the property of the estate.

17 Subchapter 2. Special Administrators

18 § 961. SPECIAL ADMINISTRATOR; APPOINTMENT WHEN ESTATE
19 JEOPARDIZED; CONDUCT OF BUSINESS

20 When the interests of the estate of a deceased person will be jeopardized by
21 the delay intervening between death and the appointment of an administrator or
22 executor, the ~~probate division of the superior court~~ Probate Division of the

1 Superior Court may, upon motion of an heir or next of kin, appoint a special
2 administrator to act until an administrator or executor is appointed and
3 qualified. The special administrator may continue operation of the business
4 conducted by the deceased, including application for and operating under the
5 transfer of any license held by the deceased for the dispensing of alcoholic
6 beverages.

7 § 962. APPOINTMENT IN CASE OF DELAY

8 When there is delay in granting letters testamentary or of administration,
9 occasioned by an appeal from the allowance or disallowance of a will, or from
10 other cause, the ~~probate division of the superior court~~ Probate Division of the
11 Superior Court may appoint a special administrator to act in collecting and
12 taking charge of the estate of the deceased until the questions causing the delay
13 are decided and an executor or administrator is appointed. An appeal shall not
14 be allowed from the appointment of a special administrator.

15 § 963. POWERS

16 A special administrator shall collect the goods, chattels, and credits of the
17 deceased and preserve the same for the executor or administrator afterwards
18 appointed and for that purpose may commence and maintain actions as an
19 administrator and may sell perishable and other personal estate as the ~~probate~~
20 ~~division of the superior court~~ Probate Division of the Superior Court orders

1 sold and may allow or deny claims against the estate as otherwise provided
2 by law.

3 § 964. LIABILITY FOR DEBTS

4 Such special administrator shall not be liable to an action by a creditor or to
5 pay any debts of the deceased. With the consent of the ~~probate division of the~~
6 ~~superior court~~ Probate Division of the Superior Court, he or she may pay the
7 expenses of the last sickness and the funeral expenses of the deceased and any
8 bills against the estate of the deceased of his or her own contracting.

9 § 965. BOND

10 Before entering upon the duties of his or her trust, such special
11 administrator shall give a bond as the court directs, conditioned that he or she
12 will make and return a true inventory of the goods, chattels, rights, credits and
13 effects of the deceased which come to his or her possession or knowledge, and
14 that he or she will truly account for such as are received by him or her, when
15 required by the ~~probate division of the superior court~~ Probate Division of the
16 Superior Court, and will deliver the same to the person afterwards appointed
17 executor or administrator or to a person authorized to receive the same.

18 § 966. POWERS TO CEASE, WHEN

19 Upon granting letters testamentary or of administration on the estate of the
20 deceased, the powers of such special administrator shall cease. He or she shall
21 forthwith deliver to the executor or administrator the goods, chattels, ~~moneys~~

1 monies and effects of the deceased in his or her hands, and the executor or
2 administrator may prosecute to final judgment actions commenced by such
3 special administrator.

4 Sec. 6. 14 V.S.A. chapter 63 is amended to read:

5 CHAPTER 63. INVENTORY, APPRAISAL, AND ACCOUNTS

6 § 1051. INVENTORY

7 Within ~~30~~ 60 days after appointment, an executor or administrator, who is
8 not a special administrator or a successor to another representative who has
9 previously discharged this duty, shall prepare an inventory of property owned
10 by the decedent at the time of death, listing it with reasonable detail, and
11 indicating as to each listed item, its fair market value as of the date of the
12 decedent's death, and the type and amount of any lien or encumbrance that
13 may exist with reference to any item. The executor or administrator shall file
14 the original of the inventory with the ~~probate division of the superior court~~
15 Probate Division of the Superior Court, and shall serve copies as provided by
16 the ~~rules of probate procedure~~ Rules of Probate Procedure. The time for filing
17 the inventory may be extended by the court for a ~~period not to exceed a total of~~
18 ~~90 days~~ good cause.

19 § 1052. APPRAISERS

20 (a) The executor or administrator may employ a one or more qualified and
21 disinterested ~~appraiser~~ appraisers to assist in ascertaining the fair market value
22 as of the date of the decedent's death of any assets the value of which may be

1 subject to reasonable doubt. ~~Different persons may be employed to appraise~~
2 ~~different kinds of assets included in the estate.~~ The names and addresses of
3 any ~~appraiser~~ appraisers shall be indicated on the inventory with the item or
4 items appraised.

5 (b) ~~If any property not included in the original inventory comes to the~~
6 ~~knowledge of an executor or administrator or if an executor or administrator~~
7 ~~learns that the value or description indicated in the original inventory for any~~
8 ~~item is erroneous or misleading, a supplementary inventory or appraisal shall~~
9 ~~be made showing the market value as of the date of the decedent's death of the~~
10 ~~new item or the revised market value or descriptions, and the appraisals or~~
11 ~~other data relied upon, if any, and file it with the court and serve copies of it as~~
12 ~~provided by the rules of probate procedure.~~

13 (c) ~~Upon motion filed within 30 days of the filing of an inventory under~~
14 ~~section 1051 of this title or under subsection (b) of this section, by any creditor~~
15 ~~having a claim of more than \$500.00, or by any heir, devisee or legatee entitled~~
16 ~~to property or cash of value of more than \$500.00, on distribution of the estate,~~
17 ~~the court, after hearing, may appoint one or more special appraisers to~~
18 ~~reappraise any item of property reported in the inventory or supplementary~~
19 ~~inventory, or to appraise any property omitted from any inventory.~~

1 § 1053. SUPPLEMENTAL INVENTORY

2 (a) If the executor or administrator learns of the existence of any property
3 not included in the original inventory or learns that the value or description
4 indicated in the original inventory for any item is erroneous or misleading, the
5 executor or administrator shall:

6 (1) make a supplementary inventory or appraisal showing the market
7 value as of the date of the decedent's death of the new item or the revised
8 market value or descriptions, and the appraisals or other data relied upon, if
9 any; and

10 (2) file the supplementary inventory or appraisal with the court and
11 serve copies of it as provided by the Rules of Probate Procedure.

12 (b) Upon motion filed within 30 days after the filing of an original or
13 supplemental inventory by any creditor having a claim of more than \$1,000.00,
14 or by any heir, devisee or legatee entitled to property or cash of value of more
15 than \$500.00 on distribution of the estate, the court shall hold a hearing and
16 may appoint one or more special appraisers to reappraise any item of property
17 reported in the inventory or to appraise any property omitted from the
18 inventory.

1 § 1054. ~~ARTICLES~~ ASSETS NOT INVENTORIED

2 ~~Under the direction of the probate division of the superior court, the~~
3 ~~following items shall not be considered as assets of the estate, nor be~~
4 ~~administered as such, nor shall they be included in the inventory:~~

5 (1) ~~The wearing apparel of the deceased;~~

6 (2) ~~The wearing apparel of the widow according to the estate and degree~~
7 ~~of her husband, if the deceased leaves a widow;~~

8 (3) ~~The wearing apparel of the minor children if the deceased leaves~~
9 ~~minor children;~~

10 (4) ~~Such provisions and other articles as will necessarily to be consumed~~
11 ~~or used in the subsistence of the family of the deceased. Wearing apparel of~~
12 ~~the deceased or any other member of the household, and provisions and other~~
13 ~~articles to be consumed or used in the subsistence of the household, shall not~~
14 ~~be considered as assets of the estate unless, after hearing upon motion, the~~
15 ~~court finds that an item has intrinsic value in addition to its value for wear or~~
16 ~~subsistence, or that its inclusion in inventory would otherwise benefit the~~
17 ~~estate.~~

18 § 1055. ACCOUNTS OF EXECUTORS AND ADMINISTRATORS; TIME
19 OF RENDERING; EXAMINATION

20 An executor or administrator shall render an account of his or her
21 administration within one year from the time of receiving letters testamentary

1 or of administration, and annually thereafter, ~~and at such other times as the~~
2 ~~court may require,~~ or otherwise as ordered by the Probate Division of Superior
3 Court until the estate is wholly settled, ~~and he or she.~~ The fiduciary may be
4 examined on oath upon any matter relating to ~~his~~ the account.

5 § 1056. LIABILITY ON BOND FOR NEGLECT

6 When an executor or administrator, being duly cited by the ~~probate division~~
7 ~~of the superior court~~ Probate Division of the Superior Court, neglects to render
8 ~~his or her~~ a required account, ~~he or she~~ the fiduciary shall be liable on ~~his or~~
9 ~~her~~ the fiduciary's bond for the damages which accrue.

10 § 1057. FOR WHAT TO ACCOUNT

11 ~~An executor or administrator shall be chargeable in his or her account with~~
12 ~~the goods, chattels, rights and credits of the deceased which come to his or her~~
13 ~~possession, also with the proceeds of the real estate sold for the payment of~~
14 ~~debts and legacies and with the interest, profit and income which come to his~~
15 ~~or her hands from the estate of the deceased. The executor or administrator~~
16 ~~shall account for the personal estate of the deceased at its appraisal, except as~~
17 ~~hereinafter provided.~~

18 The accounting of the executor or administrator shall:

19 (1) be done on a cash basis;

1 (2) include the balance at the beginning of the period covered by the
2 accounting, all receipts, all payments, and the balance at the end of the period
3 covered by the accounting; and

4 (3) be prepared on forms provided by the court, or on any spreadsheet or
5 generally accepted software format accepted by the court that provides the
6 required information.

7 § 1058. NOT TO GAIN OR LOSE BY INCREASE OR DECREASE IN
8 VALUE

9 An executor or administrator shall not profit by the increase, nor suffer loss
10 by the decrease or destruction, without ~~his~~ the fiduciary's fault, of any part of
11 the ~~personal~~ estate. ~~He~~ The executor or administrator shall account for ~~the~~
12 ~~excess when he sells any of the personal estate~~ any gain or loss incurred when
13 any property is sold for more or less than the ~~appraisal~~ inventory value. ~~If he~~
14 ~~sells any for less than the appraisal, he shall not be responsible for the loss, if it~~
15 ~~appears to be beneficial to the estate to sell it.~~

16 § 1059. ~~TO ACCOUNT FOR SELLING PRICE, IF SOLD BY ORDER OF~~
17 COURT

18 ~~When an executor or administrator sells personal estate under an order of~~
19 ~~the probate division of the superior court, he or she shall account for the same~~
20 ~~at the price for which it is sold. [Repealed.]~~

1 § 1060. ~~ACCOUNTABLE FOR PROCEEDS OF REALTY~~

2 ~~The proceeds of real estate, sold for the payment of the debts and charges of~~
3 ~~administration, shall be assets in the hands of the administrator as if the same~~
4 ~~had been part of the goods and chattels of the deceased; and the executor or~~
5 ~~administrator and the sureties on his administration bond shall be accountable~~
6 ~~therefor. [Repealed.]~~

7 § 1061. WHEN NOT ACCOUNTABLE FOR DEBTS DUE

8 An executor or administrator shall not be accountable for debts due the
9 deceased if it appears that they remain uncollected without his or her fault.

10 § 1062. ~~ACCOUNTABLE FOR INCOME FROM REALTY~~ USE BY
11 EXECUTOR OR ADMINISTRATOR

12 ~~An executor or administrator shall account for the income of the real estate~~
13 ~~while it remains in his or her possession and if the executor or administrator~~
14 ~~uses or occupies any part of it, he or she shall account for it as may be agreed~~
15 ~~upon among the parties interested, or adjudged by the court with their consent.~~
16 ~~If the parties do not agree upon the sum to be allowed, the same may be~~
17 ~~ascertained by a master appointed under the rules of probate procedure. If an~~
18 ~~executor or administrator uses or occupies any asset of the estate, the executor~~
19 ~~or administrator shall account for the use or occupancy upon agreement of the~~
20 ~~interested parties. If the parties do not agree upon the amount to be allowed,~~

1 the court shall determine the proper amount, with the assistance of a master at
2 the court's discretion.

3 § 1063. ACCOUNTABLE FOR LOSSES BY NEGLIGENCE

4 When an executor or administrator neglects or unreasonably delays to raise
5 money by collecting the debts or selling the real or personal estate of the
6 deceased, or neglects to pay over the money ~~he or she~~ the fiduciary has in his
7 or her hands, and the value of the estate is thereby lessened, or unnecessary
8 cost or interest accrues, or the persons interested suffer loss, the same shall be
9 deemed waste, and the damages sustained may be charged and allowed against
10 ~~him or her in his or her~~ the fiduciary in the fiduciary's account or ~~he or she~~ the
11 fiduciary shall be liable ~~therefor~~ for the damages on ~~his or her~~ the fiduciary's
12 bond.

13 § 1064. COSTS TO BE ALLOWED

14 The amount paid by an executor or administrator for costs awarded against
15 ~~him or her~~ him or her shall be allowed in ~~his or her administration~~ the fiduciary
16 account, unless it appears that the action or proceeding in which the costs are
17 taxed was prosecuted or resisted without just cause.

18 § 1065. FEES AND EXPENSES

19 An executor or administrator shall be allowed necessary expenses in the
20 care, management, and settlement of the estate and, ~~for his or her services,~~
21 ~~such fees as the law provides, with extra expenses~~ reasonable fees for services.

1 When, by will, the deceased makes some other provisions for compensation to
2 ~~his or her~~ the executor, that shall be a full satisfaction for his or her services,
3 unless, by a written instrument filed in the ~~probate division of the superior~~
4 ~~court, he or she~~ Probate Division of the Superior Court, the executor renounces
5 all claim to the compensation provided by the will, or unless otherwise ordered
6 by the court.

7 § 1066. VERIFICATION; RIGHT OF HEIR TO BE EXAMINED

8 ~~The probate division of the superior court shall examine every executor and~~
9 ~~administrator on oath as to the correctness of his or her account before the~~
10 ~~same is allowed, except when objection is not made to the allowance of the~~
11 ~~account and its correctness is satisfactorily established by competent~~
12 ~~testimony. The heirs, legatees and distributees of an estate shall have the same~~
13 ~~privilege of being examined on oath upon any matter relating to an~~
14 ~~administration account that the executor or administrator has. An accounting~~
15 ~~that is consented to by all interested parties shall be allowed without hearing~~
16 ~~unless the Probate Division of the Superior Court sets a hearing upon the~~
17 ~~accounting. At the hearing, the executor or administrator may be examined~~
18 ~~under oath by the court or interested parties. Interest parties may be examined~~
19 ~~under oath. An account shall not be rejected for de minimis discrepancies~~
20 ~~unless the court finds good cause to reject the account on that basis.~~

1 § 1067. NOTICE OF ACCOUNTING

2 Before an administration account of an executor or administrator is allowed,
3 notice shall be given as provided by the Rules of Probate Procedure.

4 § 1068. SURETY MAY INTERVENE AND APPEAL

5 Upon the settlement of the account of an executor, administrator or other
6 person, a person liable as surety in respect to the account, upon motion, may
7 intervene as a party and may appeal as provided in other cases of appeals from
8 the decision of the ~~probate division of the superior court~~ Probate Division of
9 the Superior Court. The surety in such case, before the appeal is allowed, shall
10 give a bond to secure the principal from damages and costs and to secure the
11 intervening damages and costs to the adverse party.

12 § 1069. WAIVER OF FINAL ACCOUNTING

13 If an estate has been open for at least six months and the remaining assets
14 include no real estate, a final accounting may be waived if the the executor or
15 administrator files with the court:

16 (1) the fiduciary's verified representation that all claims and all other
17 obligations of the estate have been satisfied;

18 (2) a schedule of remaining assets to be distributed;

19 (3) a schedule of proposed distribution;

20 (4) a waiver of a final accounting and consent to the proposed
21 distribution by all interested parties; and

1 § 1410. REPRESENTATIVE MAY ~~COMPOUND~~ COMPROMISE CLAIMS
2 OF THE ESTATE

3 With the approval of the ~~probate division of the superior court~~ Probate
4 Division of the Superior Court, an executor or administrator may ~~compound~~
5 compromise with a debtor of the deceased for a debt due and may give a
6 discharge of ~~such~~ the debt on receiving a ~~just dividend~~ payment of the estate of
7 ~~such debtor~~ compromised amount.

8 § 1411. DISPUTED CLAIM MAY BE REFERRED

9 When there is a disputed claim between an executor or administrator on
10 behalf of the estate and another person, ~~with the consent of the parties in~~
11 ~~writing~~, it may be referred to a master as provided by the rules of probate
12 procedure, ~~whether an appeal has been granted or not, if an appeal has not been~~
13 ~~entered in superior court~~. The award, made in writing and returned to and
14 accepted by the court, shall be final between the parties.

15 § 1412. CLAIM BETWEEN EXECUTOR AND ESTATE

16 When a claim exists between an executor or administrator and the estate, a
17 special administrator may be appointed solely for the purpose of acting upon
18 that claim.

1 § 1413. DEBT AS PERSONALTY; REPRESENTATIVE MAY

2 FORECLOSE MORTGAGE

3 A debt secured by mortgage belonging to the estate of a deceased person as
4 mortgagee or assignee of the right of a mortgagee, when such mortgage was
5 not foreclosed in the lifetime of the deceased, shall be personal assets in the
6 hands of the executor or administrator and administered and accounted for as
7 such. The executor or administrator may foreclose the mortgage and take
8 possession of the mortgaged premises as the ~~mortgagee or assignee~~ decedent
9 might have done in ~~his~~ the decedent's lifetime.

10 § 1414. ~~EQUITY OF REDEMPTION TO BE HELD IN TRUST;~~

11 ~~REDEMPTION~~

12 ~~The executor or administrator shall hold the equity of redemption in~~
13 ~~mortgaged premises in trust for the creditors or other persons entitled to the~~
14 ~~same and on the redemption of such mortgaged premises and receipt of the~~
15 ~~money paid therefor, he shall release and discharge the same. [Repealed.]~~

16 § 1415. ~~DISPOSAL OF LANDS HELD UNDER MORTGAGE OR TAKEN~~

17 ~~ON EXECUTION~~

18 ~~Real estate held under a mortgage by an executor or administrator may be~~
19 ~~sold for the payment of debts or legacies or the charges of administration, as~~
20 ~~any real estate of which the deceased person died seised, or may be assigned~~
21 ~~and set out to the person entitled to it as the other estate of the deceased. If~~

1 ~~more than one person is entitled to it, partition may be made between them, as~~
2 ~~in other cases. [Repealed.]~~

3 § 1416. ESTATE NOT SUED WHEN MASTERS APPOINTED;

4 EXCEPTIONS

5 Nothing in this chapter shall authorize a claimant to commence or prosecute
6 an action against an executor or administrator where a master is appointed in
7 the proceeding, nor where a time is allowed by an order of the ~~probate division~~
8 ~~of the superior court~~ Probate Division of the Superior Court for the executor or
9 administrator to pay the debts against the deceased. Such an action shall not be
10 commenced or prosecuted except as provided by law for that purpose.

11 § 1417. PROSECUTION OF ACTION

12 A person having a contingent or other claim against a deceased person may
13 prosecute the ~~same~~ claim against the executor, administrator, heirs, devisees or
14 legatees. ~~In such case, an~~ An action commenced against the deceased before
15 death may be prosecuted to final judgment. A claimant having a lien on the
16 real or personal estate of the deceased, by attachment previous to death, on
17 obtaining judgment, may have execution against such real or personal estate.

18 § 1418. ~~COSTS NOT TO BE TAXED AGAINST ESTATE~~

19 ~~When costs are allowed against an executor or administrator, execution~~
20 ~~shall not issue against the estate of the deceased in his hands, but shall be~~
21 ~~awarded against him as for his own debt. [Repealed.]~~

1 Subchapter 2. Survival of Causes

2 § 1451. WHAT ACTIONS SURVIVE

3 Actions of ejectment or other proper actions to recover the seisin or
4 possession of lands, tenements or hereditaments, actions of replevin, actions ~~of~~
5 on tort on account of the wrongful conversion of personal estate and actions ~~of~~
6 on tort on account of a trespass or for damages done to real or personal estate
7 shall survive, in addition to the actions which survive by common law, and
8 may be commenced and prosecuted by the executor or administrator.

9 § 1452. WHEN ACTIONS FOR PERSONAL INJURY SURVIVE

10 In an action for the recovery of damages for a bodily hurt or injury,
11 occasioned to the plaintiff by the act or default of the defendant or defendants,
12 if either party dies during the pendency of such action, the action shall survive
13 and may be prosecuted to final judgment by or against the executors or
14 administrators of such deceased party. When there are several defendants in
15 such action, and one or more, but not all, die, it shall be prosecuted against the
16 surviving defendant or defendants, and against the estate of the deceased
17 defendant or defendants.

18 § 1453. SURVIVAL OF CAUSES OF ACTION

19 The causes of action mentioned in sections 1451 and 1452 of this title shall
20 survive. Actions based thereon may be commenced and prosecuted by or
21 against the executor or administrator. When such actions are commenced in

1 the lifetime of the deceased, after death the same may be prosecuted by or
2 against the executor or administrator where by law that mode of prosecution is
3 authorized.

4 § 1454. TRESPASS; DAMAGES

5 In an action ~~of~~ on tort on account of a trespass commenced or prosecuted
6 against an executor or administrator, the plaintiff or claimant shall recover for
7 the value of the goods taken, or the actual damage, and not vindictive or
8 exemplary damages.

9 § 1455. HEIR MAY NOT SUE UNTIL SHARE ASSIGNED

10 When an executor or administrator is appointed and assumes the trust, an
11 action of ejectment or other action to recover the seisin or possession of lands,
12 or for damage done to such lands, shall not be maintained by an heir or devisee
13 until there is a decree of the ~~probate division of the superior court~~ Probate
14 Division of the Superior Court assigning such lands to such heir or devisee, or
15 the time allowed for paying debts has expired, unless the executor or
16 administrator surrenders the possession to such heir or devisee.

17 § 1491. RIGHT OF ACTION WHERE DEATH RESULTS FROM

18 WRONGFUL ACT

19 When the death of a person is caused by the wrongful act, neglect or default
20 of a person or corporation, and the act, neglect or default is such as would have
21 entitled the party injured to maintain an action and recover damages in respect

1 thereof, if death had not ensued, the person or corporation liable to such action
2 shall be liable to an action for damages, notwithstanding the death of the
3 person injured and although the death is caused under such circumstances as
4 amount in law to a felony.

5 § 1492. ACTION FOR DEATH FROM WRONGFUL ACT; PROCEDURE;
6 DAMAGES

7 (a) Such action shall be brought in the name of the personal representative
8 of such deceased person and commenced within two years from the discovery
9 of the death of the person, but if the person against whom such action accrues
10 is out of the state, the action may be commenced within two years after such
11 person comes into the state. After such cause of action accrues and before
12 such two years have run, if the person against whom it accrues is absent from
13 and resides out of the state and has no known property within the state which
14 can by common process of law be attached, the time of his or her absence shall
15 not be taken as part of the time limited for the commencement of the action. If
16 the death of the decedent occurred under circumstances such that probable
17 cause is found to charge a person with homicide, the action shall be
18 commenced within seven years after the discovery of the death of the decedent
19 or not more than two years after the judgment in that criminal action has
20 become final, whichever occurs later.

1 (b) The court or jury before whom the issue is tried may give such damages
2 as are just, with reference to the pecuniary injuries resulting from such death,
3 to the wife and next of kin or husband and next of kin, as the case may be. In
4 the case where the decedent is a minor child, the term pecuniary injuries shall
5 also include the loss of love and companionship of the child and for destruction
6 of the parent-child relationship in such amount as under all the circumstances
7 of the case, may be just.

8 (c) The amount recovered shall be for the benefit of such wife and next of
9 kin or husband and next of kin, as the case may be and shall be distributed by
10 such personal representative as hereinafter provided. Such distribution,
11 whether of the proceeds of a settlement or of an action, shall be in proportion
12 to the pecuniary injuries suffered, the proportions to be determined upon notice
13 to all interested persons in such manner as the superior court, or in the event
14 such court is not in session a superior judge, shall deem proper and after a
15 hearing at such time as such court or judge may direct, upon application made
16 by such personal representative or by the wife, husband or any next of kin.
17 The distribution of the proceeds of a settlement or action shall be subject to the
18 following provisions, ~~viz:~~

19 (1) In case the decedent shall have left a spouse surviving, but no
20 children, the damages recovered shall be for the sole benefit of such spouse;

1 (2) In case the decedent leaves neither spouse nor children, but leaves a
2 mother and leaves a father who has abandoned the decedent or has left the
3 maintenance and support of the decedent to the mother, the damages or
4 recovery shall be for the sole benefit of such mother;.

5 (3) In case the decedent leaves neither spouse nor children, but leaves a
6 father and leaves a mother who has abandoned the decedent, the damages or
7 recovery shall be for the sole benefit of such father;.

8 (4) No share of such damages or recovery shall be allowed in the estate
9 of a child to a parent who has neglected or refused to provide for such child
10 during infancy or who has abandoned said child whether or not such child dies
11 during infancy, unless the parental duties have been subsequently and
12 continuously resumed until the death of the child;.

13 (5) No share of such damages or recovery shall be allowed in the estate
14 of a spouse to his or her surviving spouse who has abandoned the decedent or
15 in the estate of a wife to a husband who has persistently neglected to support
16 his wife prior to her death;.

17 (6) ~~The superior court or superior judge, as the case may be,~~ Superior
18 Court shall have jurisdiction to determine the questions of abandonment and
19 failure to support under subdivisions (2), (3), (4), and (5) of this subsection and
20 ~~the probate division of the superior court~~ Probate Division of the Superior
21 Court having jurisdiction of the decedent's estate shall decree the net amount

1 recovered pursuant to the final judgment order of the ~~superior court or superior~~
2 ~~judge~~ Superior Court.

3 (d) A party may appeal from the findings and decision rendered pursuant to
4 subsection (c) of this section as in causes tried by a court.

5 (e) Notwithstanding subsection (a) of this section, if the death of the
6 decedent was caused by an intentional act constituting murder, the action may
7 be commenced within seven years after the discovery of the death of the
8 decedent.

9 Sec. 8. 14 V.S.A. chapter 73 is amended to read:

10 CHAPTER 73. PROCEEDINGS FOR RECOVERY OF
11 PROPERTY EMBEZZLED AND FRAUDULENTLY CONVEYED
12 § 1551. PERSON SUSPECTED OF EMBEZZLEMENT, CONCEALING
13 PAPERS OR CONVEYING DECEDENT'S PROPERTY

14 ~~If an executor or administrator, heir, legatee, creditor, or other person~~
15 ~~interested in the estate of a deceased person files a motion in the probate~~
16 ~~division of the superior court alleging that a person is suspected of having~~
17 ~~concealed, embezzled, or conveyed away any of the money, goods, or chattels~~
18 ~~of the deceased, or has possession or knowledge of any deed, conveyance,~~
19 ~~bond, contract, or other writing which contains evidence of, or tends to~~
20 ~~disclose, the right, title, interest, or claim of the deceased to real or personal~~
21 ~~estate, or the last will and testament of the deceased, the probate division of the~~

1 ~~superior court may subpoena or otherwise order that person to appear before it~~
2 ~~to be examined on oath upon the matter. If the person so cited refuses to~~
3 ~~appear and submit to examination or to answer interrogatories, the court may~~
4 ~~issue a warrant committing the person to the custody of the commissioner of~~
5 ~~corrections until compliance is given. Such interrogatories and answers shall~~
6 ~~be in writing, signed by the party examined and filed in the court.~~

7 (a) An executor or administrator, heir, legatee, creditor, or other person
8 interested in the estate of a deceased person may file a motion for discovery in
9 the Probate Division of the Superior Court alleging that a person is suspected
10 of having concealed, embezzled, or conveyed any of the deceased's property,
11 or has possession or knowledge of any deed, conveyance, bond contract, or
12 other writing which contains evidence of, or tends to disclose, the right, title,
13 interest, or claim of the deceased to real or personal estate, or the last will and
14 testament of the deceased.

15 (b) The court may subpoena or otherwise order a person to appear before it
16 to be examined under oath upon the matter or to answer interrogatories or
17 requests to produce to be filed with the court. If the person so ordered refuses
18 to appear and submit to examination or to answer interrogatories, the person
19 may be subject to proceedings for civil contempt under 12 V.S.A. § 122.
20 Interrogatories and answers to interrogatories shall be in writing, signed under
21 oath by the party examined, and filed with the court.

1 § 1552. PERSON ENTRUSTED WITH ESTATE MAY BE COMPELLED
2 TO RENDER ACCOUNT

3 ~~On motion of an executor or administrator, the court may cite a person who~~
4 ~~is entrusted by an executor or administrator with any part of the estate of the~~
5 ~~deceased person to appear before it, and may require the person to render a full~~
6 ~~account, on oath, of the money, goods, chattels, bonds, accounts or other~~
7 ~~papers belonging to the estate which have come into the person's possession,~~
8 ~~in trust for the executor or administrator, and of any proceedings thereon. If~~
9 ~~the person so cited refuses to appear and render an account, the court may~~
10 ~~proceed as provided in section 1551 of this title. On motion of an executor or~~
11 ~~administrator, the court may order a person who is entrusted by an executor or~~
12 ~~administrator with any part of the estate of the deceased person to appear under~~
13 ~~oath and render a full accounting of the property. If the person so ordered~~
14 ~~refuses to appear and render an account, the person may be subject to~~
15 ~~proceedings for civil contempt under 12 V.S.A. § 122.~~

16 § 1553. FORFEITURE BY PERSON EMBEZZLING BEFORE LETTERS
17 ISSUED

18 ~~If a person embezzles or alienates any of the moneys, goods, chattels or~~
19 ~~effects of a decedent before the granting of letters testamentary or of~~
20 ~~administration on his estate, such person shall be liable to an action in favor of~~
21 ~~the executor or administrator of such estate for double the value of the property~~

1 ~~so embezzled or alienated, to be recovered for the benefit of such estate. If a~~
2 ~~person embezzles or converts any of the property of a decedent before the~~
3 ~~appointment of the executor or administrator, the person shall be liable to the~~
4 ~~executor or administrator of the estate for double the value of the property~~
5 ~~embezzled or converted, to be recovered for the benefit of the estate.~~

6 § 1554. RECOVERY OF ESTATE FRAUDULENTLY CONVEYED BY
7 DECEASED

8 ~~If it appears to the probate division of the superior court on the settlement of~~
9 ~~the estate of a deceased person that the avails of the real and personal estate,~~
10 ~~chargeable with the payment of the debts of the deceased, have been expended~~
11 ~~and are insufficient to pay such debts, and it is shown to the court that the~~
12 ~~deceased, in his or her lifetime, conveyed real estate or a right or interest~~
13 ~~therein with intent to defraud his or her creditors, or to avoid a right, debt or~~
14 ~~duty of a person, or had so conveyed such estate that by law the conveyance is~~
15 ~~void as against his or her creditors, and the estate attempted to be conveyed~~
16 ~~would be liable to attachment or execution by a creditor of the deceased in his~~
17 ~~or her lifetime, the probate division of the superior court may license the~~
18 ~~executor or administrator to sell so much of the real estate so fraudulently~~
19 ~~conveyed as is necessary to make up the deficiency of assets in his or her~~
20 ~~hands to pay the debts of the deceased.~~

1 (a) If the executor or administrator determines there is a deficiency of
2 assets in the estate, the fiduciary may bring an action in the Probate Division of
3 the Superior Court for the benefit of the creditors to recover any property
4 fraudulently conveyed by the deceased in his lifetime.

5 (b) The court may license the executor or administrator to sell so much of
6 the property fraudulently conveyed as is necessary to make up the deficiency
7 of assets in the estate to pay the debts of the decedent if it appears to the
8 court that:

9 (1) there are insufficient assets to pay the debts of the deceased;

10 (2) the deceased conveyed property or a right or interest therein:

11 (A) with the intent to defraud creditors;

12 (B) to avoid a debt or duty; or

13 (C) with respect to real estate, in a manner that by law renders the
14 conveyance void as against his or her creditor; and

15 (3) the estate attempted to be conveyed would be subject to attachment
16 or execution by a creditor of the deceased in his or her lifetime.

17 § 1555. SALE, HOW CONDUCTED

18 The license to sell such real estate shall be granted and the sale conducted as
19 provided for the sale of real estate for the payment of the debts of a deceased
20 person. The sale and conveyance so made by the executor or administrator
21 shall be valid and effectual to convey such real estate.

1 § 1556. ~~REPRESENTATIVE MAY SUE FOR ESTATE SO CONVEYED~~

2 ~~When there is a deficiency of assets in the hands of an executor or~~
3 ~~administrator, and when the deceased person made such fraudulent conveyance~~
4 ~~of real estate in his lifetime, the executor or administrator may commence and~~
5 ~~prosecute to final judgment an action for the recovery of, and may recover for~~
6 ~~the benefit of the creditors, such real estate; and also, for the benefit of the~~
7 ~~creditors, may sue and recover for goods, chattels, rights, or credits~~
8 ~~fraudulently conveyed by the deceased in his lifetime. [Repealed.]~~

9 § 1557. SALE OF FRAUDULENTLY CONVEYED ESTATE; MOTION OF
10 CREDITORS

11 (a) An executor or administrator shall not be bound to make sale of estate,
12 so fraudulently conveyed, under a license from the ~~probate division of the~~
13 ~~superior court~~ Probate Division of the Superior Court, nor sue for the estate for
14 the benefit of the creditors unless on motion of creditors of the deceased, nor
15 unless the creditors filing the motion pay that part of the costs and expenses, or
16 give security to the executor or administrator as the court judges equitable.

17 (b) An executor or administrator shall not be required to sell fraudulently
18 conveyed property under a license from the Probate Division of the Superior
19 Court, or sue for the fraudulently conveyed property for the benefit of the
20 creditors unless the creditors of the deceased file a motion to do so and comply

1 with any court requirements to pay associated costs and expenses or give
2 security to the executor or administrator.

3 § 1558. CREDITOR MAY ACT

4 ~~When there is a deficiency of assets in the hands of an executor or~~
5 ~~administrator, and when the deceased person made, in his or her lifetime, such~~
6 ~~fraudulent conveyance of his or her real estate or of a right or interest therein,~~
7 ~~by license of the probate division of the superior court, any creditor of the~~
8 ~~estate may commence and prosecute to final judgment an action, for the~~
9 ~~recovery of the same in the name of the executor or administrator. Such~~
10 ~~creditor may recover for the benefit of the creditors such real estate or interest~~
11 ~~therein, so conveyed, and for the benefit of the creditors, by license of the~~
12 ~~probate division of the superior court, may sue and recover, in the name of the~~
13 ~~executor or administrator, for all goods, chattels, rights or credits conveyed by~~
14 ~~the deceased in his or her lifetime by a fraudulent or void conveyance. Such~~
15 ~~action shall not be commenced until the creditor files in the probate division of~~
16 ~~the superior court a bond with sufficient sureties conditioned to indemnify the~~
17 ~~executor or administrator against the costs of such action.~~

18 (a) If there is a deficiency of assets in the estate, any creditor of the estate
19 who obtains a license to do so from the Probate Division of the Superior Court
20 may bring an action in the name of the executor or administrator in the Probate
21 Division to recover any property fraudulently conveyed by the deceased in his

1 lifetime. The action shall be for the benefit of the creditors and shall be
2 brought in the same manner as an action by the executor or administrator under
3 section 1554 of this title. A creditor licensed by the court to bring an action
4 under this section may recover any property conveyed by the deceased in his or
5 her lifetime by a fraudulent or void conveyance.

6 (b) An action under this section shall not be commenced until the creditor
7 files with the court a bond with sufficient sureties conditioned to indemnify the
8 executor or administrator against the costs of the action.

9 (c) A creditor who brings an action under this section shall have a lien upon
10 the judgment recovered by him or her for the costs incurred and any other
11 expenses the court deems equitable.

12 § 1559. CREDITOR'S LIEN

13 ~~Such creditor shall have a lien upon the judgment so recovered by him or~~
14 ~~her for the costs incurred and such other expenses as the probate division of the~~
15 ~~superior court deems equitable. [Repealed.]~~

16 Sec. 9. 14 V.S.A. chapter 75 is amended to read:

17 CHAPTER 75: LICENSE TO SELL AND CONVEY REAL AND

18 PERSONAL PROPERTY

19 Subchapter 1. General Provisions

1 § 1611. COURT MAY ORDER ~~PERSONALTY~~ PERSONAL AND REAL
2 ESTATE SOLD

3 ~~On the motion of the executor or administrator, the probate division of the~~
4 ~~superior court~~ The Probate Division of the Superior Court may order the
5 ~~personal estate, sale of all~~ or part of it, ~~to be sold~~ the personal or real estate of
6 the estate when it appears necessary or beneficial for the ~~purpose of paying~~
7 ~~debts, legacies or expenses of administration or for the preservation of the~~
8 ~~property~~ estate.

9 § 1612. ~~REALTY MAY BE SOLD, THOUGH PERSONALTY NOT~~
10 ~~EXHAUSTED~~

11 ~~When the personal estate of the deceased is not sufficient to pay the debts~~
12 ~~and charges of administration without injuring the business of those interested~~
13 ~~in the estate, or otherwise prejudicing their interests, and where a testator has~~
14 ~~not otherwise made sufficient provision for the payment of debts and charges,~~
15 ~~the probate division of the superior court, on motion of the executor or~~
16 ~~administrator, with the written consent of the heirs, devisees, and legatees, may~~
17 ~~grant license for that purpose to the executor or administrator to sell real in lieu~~
18 ~~of personal estate, if it clearly appears that a sale of real estate would be~~
19 ~~beneficial to the persons interested and will not defeat any devise of lands; in~~
20 ~~which case, the consent of the devisee shall be required.~~ [Repealed.]

1 § 1613. ~~WHEN WHOLE OF REAL ESTATE MAY BE SOLD~~

2 ~~When an executor or administrator makes application to the probate~~
3 ~~division of the superior court for license to sell real estate for payment of debts~~
4 ~~or charges of administration, and it appears that a part of such estate is~~
5 ~~sufficient for that purpose, and that such part cannot be sold without injury to~~
6 ~~those interested in the remainder, the court may grant license to sell the whole~~
7 ~~of such estate or such part as is necessary or beneficial to those concerned~~
8 ~~therein. [Repealed.]~~

9 § 1614. ~~PERSONS INTERESTED~~ PERSONS MAY PREVENT SALE;

10 BOND

11 ~~Such~~ A license to sell real estate shall not be granted if any ~~of the persons~~
12 interested person ~~in the estate~~ gives a bond in such sum and with such sureties
13 as the ~~probate division of the superior court~~ Probate Division of the Superior
14 Court directs, conditioned to pay the debts and expenses of administration
15 within such time as the court directs. Such bond shall be for the security and
16 may be prosecuted for the benefit of the creditors as well as of the executor or
17 administrator.

18 § 1615. ~~CLAIMS MAY BE SOLD OR ASSIGNED~~

19 ~~Claims belonging to an estate remaining in the hands of an executor or~~
20 ~~administrator before final settlement of such estate, which, in the opinion of~~
21 ~~the probate division of the superior court, cannot be collected by the executor~~

1 ~~or administrator without unreasonable or inconvenient delay, may be sold or~~
2 ~~assigned by the executor or administrator, under the direction of the probate~~
3 ~~division of the superior court. [Repealed.]~~

4 § 1616. ~~PURCHASER OF CLAIMS MAY SUE~~

5 ~~Actions upon claims sold by an executor or administrator as provided in~~
6 ~~section 1615 of this title shall be brought in the name of the purchaser. The~~
7 ~~fact of the sale and purchase by the plaintiff shall be set forth in the complaint,~~
8 ~~and the defendant may avail himself of any defense of which he could have~~
9 ~~availed himself in an action upon such claim by the deceased. [Repealed.]~~

10 Subchapter 2. Licenses To Sell—Procedure

11 § 1651. LICENSE TO SELL ESTATE; PROCEDURE

12 When an executor or administrator considers it necessary or beneficial to
13 sell real or personal estate, the ~~probate division of the superior court~~ Probate
14 Division of the Superior Court may grant license, when it appears necessary or
15 beneficial, under the following regulations:

16 (1) The executor or administrator shall ~~present to the court~~ file a motion
17 setting forth the ~~amount of debts due from the deceased, the charges of~~
18 ~~administration, the value of personal estate and the situation of the estate to be~~
19 ~~sold, or those other facts as~~ that show ~~that~~ the sale is necessary or beneficial;

1 (2) In cases where the consent of ~~the heirs, devisees and legatees~~
2 interested persons is required, the executor or administrator shall ~~produce to~~
3 ~~the court~~ file their consent in writing; written consents with the court.

4 (3) ~~The probate division of the superior court~~ In the event that the
5 consent of interested persons is required but cannot be obtained, the court shall
6 schedule a hearing and notice shall be given as provided in the rules of probate
7 procedure;

8 (4) ~~If the probate division of the superior court requires it, before~~ Before
9 license is granted, the court may require the executor or administrator ~~shall to~~
10 give a new bond in an amount and with sureties as the court directs,
11 conditioned that the executor or administrator shall account for the proceeds of
12 the sale;

13 (5) The executor or administrator shall be sworn before the ~~probate~~
14 ~~division of the superior court,~~ court or before some other person authorized to
15 administer oaths; and a certificate thereof shall be returned to the court before
16 sale under the order granting license;

17 (6) If the ~~proof produced~~ evidence satisfies the court, ~~and if the~~
18 ~~regulations in the first four subdivisions of this section are complied with,~~ the
19 court, ~~by decree,~~ may authorize the executor or administrator to sell that part of
20 the estate deemed necessary or beneficial, either at public or private sale, as

1 ~~will be most beneficial to all parties concerned,~~ and furnish the executor or
2 administrator a ~~certificate or~~ copy of the license to sell or order of sale;.

3 (7) If the order is to sell the estate at auction, the court shall designate
4 the ~~mode~~ manner of ~~giving~~ notice of the time and place of sale, which shall be
5 stated in the copy ~~or certificate~~ of the license to sell or order of sale furnished
6 to the executor or administrator;.

7 (8) The ~~record~~ copy of the license to sell or ~~the~~ order of sale ~~in the~~
8 ~~probate division of the superior court and the copy of certificate of the order~~
9 furnished to the executor or administrator shall state the regulations prescribed
10 ~~in the first four subdivisions~~ include findings addressing the requirements of
11 subdivisions (1) through (4) of this section with which the sale must comply.
12 ~~The certificate or.~~ A certified copy of the license to sell real estate or order of
13 sale shall be recorded in the office where a deed of the ~~lands~~ real property to be
14 sold is ~~required to be~~ recorded;.

15 (9) ~~The~~ If ordered by the court, the executor or administrator shall
16 ~~submit to the probate division of the superior court reports~~ file a report with the
17 Probate Division on the action authorized by ~~the~~ each license granted under
18 this section within 60 days from the date of the sale of any real or personal
19 property.

20 (10) If the power to sell all or part of the testator's real or personal estate
21 is expressly conferred by the will, the court shall issue a license to sell to the

1 executor or administrator without requiring notice or hearing with respect to
2 any property subject to the testamentary power, except a dwelling house in
3 which the surviving spouse or an heir, devisee or legatee is residing.

4 (11) Notwithstanding any provision of this section, no beneficial license
5 to sell that is inconsistent with the provisions or intent of a will shall be issued.

6 § 1652. DEED OF EXECUTOR OR ADMINISTRATOR

7 The deed of an executor or administrator, who has ~~such certificate or~~
8 obtained a certified copy of an order of sale or license to sell real estate from
9 the ~~probate division of the superior court~~ Probate Division of the Superior
10 Court, shall be as valid to convey the real estate of a deceased person; thereby
11 authorized to be sold, ~~as if the deed had been executed by the deceased in his~~
12 ~~or her lifetime.~~

13 § 1653. LICENSE TO SELL; WHEN BENEFICIAL

14 ~~(a) When it appears to the probate division of the superior court that it will~~
15 ~~be beneficial to interested persons, that a part or the whole of the estate, except~~
16 ~~the part thereof which passes to the surviving spouse, should be sold, on~~
17 ~~motion of the executor or administrator, the court may grant license to sell a~~
18 ~~part or the whole of the estate although not necessary to pay debts, legacies or~~
19 ~~charges of administration. The court shall schedule a hearing and notice shall~~
20 ~~be given as provided by the rules of probate procedure. With the consent in~~
21 ~~writing of the surviving spouse of the deceased or the legal representative of~~

1 ~~the surviving spouse, the license may include authority to sell the interest of~~
2 ~~the surviving spouse, as the case may be, in such real estate.~~

3 ~~(b) If the power to sell all or part of the testator's real or personal estate is~~
4 ~~expressly conferred by the will, the court shall issue a license to the executor or~~
5 ~~administrator c.t.a., without notice or hearing, as to any property subject to the~~
6 ~~testamentary power except a dwelling house in which the surviving spouse or~~
7 ~~an heir, devisee or legatee is residing.~~

8 ~~(c) Notwithstanding any provision of this section no beneficial license to~~
9 ~~sell inconsistent with the provisions or intent of a will shall be issued.~~

10 [Repealed.]

11 § 1654. DISPOSAL OF PROCEEDS OF BENEFICIAL SALE

12 In case of such ~~the~~ sale of property for the benefit of interested persons, the
13 proceeds shall be decreed ~~and assigned to the~~ those persons otherwise entitled
14 ~~to the estate and in the same proportions~~ the property.

15 § 1655. ~~REALTY TAKEN ON EXECUTION MAY BE SOLD~~

16 ~~(a) When it appears that such sale will be beneficial to all persons~~
17 ~~interested in such real estate, the probate division of the superior court may~~
18 ~~grant license to an executor or administrator to sell real estate taken by the~~
19 ~~executor or administrator on execution or held by him or her under a mortgage,~~
20 ~~although not necessary for the payment of debts, legacies or charges of~~
21 ~~administration.~~

1 ~~(b) Such license shall be granted under the same regulations as provided in~~
2 ~~this chapter for the sale of other real estate. [Repealed.]~~

3 § 1656. ESTATE SOLD TO PAY DEBTS AND LEGACIES IN OTHER
4 STATES

5 When the sale of real or personal estate is not necessary to pay the debts
6 ~~against~~ of the deceased person in this state State, and it appears to the ~~probate~~
7 ~~division of the superior court,~~ Probate Division of the Superior Court by the
8 records and proceedings of a probate court in another state that the estate of the
9 deceased in ~~such~~ the other state is not sufficient to pay the debts and legacies in
10 that state, the ~~probate division of the superior court~~ Probate Division of the
11 Superior Court in this state State may license the executor or administrator to
12 sell the real or personal estate for the payment of debts and legacies in the
13 other state, in the same manner as provided for the payment of debts and
14 legacies in this state State.

15 § 1657. ~~REALTY~~ REAL ESTATE SOLD TO PAY LEGACY

16 When the personal property of the estate is insufficient to satisfy a legacy is
17 given by will ~~which, for want of sufficient personal estate or otherwise, is~~
18 ~~chargeable upon the real estate of the deceased,~~ the executor may be licensed
19 by the ~~probate division of the superior court~~ Probate Division of the Superior
20 Court to sell ~~such~~ real estate of the estate for the purpose of paying ~~such~~ the
21 legacy ~~as provided in the sale of real estate for the payment of debts.~~

1 § 1658. ~~ADMINISTRATOR DYING~~ DEATH, RESIGNATION, OR
2 REMOVAL OF FIDUCIARY; NEW LICENSE

3 In case of the death, resignation, or removal of an executor or administrator
4 before the completion of a sale of real estate under a license granted by the
5 ~~probate division of the superior court~~ Probate Division of the Superior Court,
6 on motion at any time within two years after issuing a prior license, the court
7 may issue a new license to the successor fiduciary without further notice or
8 hearing.

9 § 1659. LICENSE WHEN DECEASED UNDER CONTRACT TO
10 CONVEY; COURT MAY GRANT; EFFECT OF DEED

11 (a) When a ~~deceased person in his or her lifetime was under~~ decedent had
12 contracted to convey real estate and the party contracted with has performed or
13 is ready to perform the conditions of the contract, ~~binding at law or in equity,~~
14 to deed lands, on application motion for that purpose, the ~~probate division of~~
15 the superior court Probate Division of the Superior Court may grant license to
16 the executor or administrator of the ~~deceased person~~ estate to convey such
17 lands according to ~~such~~ the contract, ~~or with such~~ including any modifications
18 ~~as are agreed upon by~~ to it. If the parties and approved by executor or
19 administrator is the court; and, if transferee under the contract is to convey
20 ~~lands to the executor or administrator~~, the judge of the court shall execute the
21 deed. The deed, executed by the executor, administrator, ~~or~~ judge, or special

1 administrator or master appointed by the court shall be as effectual valid to
2 convey such lands as if executed by the deceased person in his or her lifetime
3 the real estate authorized to be conveyed under the contract.

4 (b) The Probate Division of the Superior Court shall not grant a license to
5 convey the real estate of a deceased person under contract if it appears to the
6 court after hearing that the assets in the hands of the executor or administrator
7 will be reduced by the conveyance in an amount that prevents a creditor from
8 receiving the whole debt and the value of the real estate to be sold is materially
9 greater than the contract price.

10 § 1660. ~~LICENSE GRANTED BY COURT, WHEN; NOTICE; HEARING~~

11 ~~A probate division of the superior court shall not grant such license to deed~~
12 ~~the lands of a deceased person until notice has been given if it appears to the~~
13 ~~court upon a hearing that the assets in the hands of the executor or~~
14 ~~administrator will thereby be so reduced as to prevent a creditor from receiving~~
15 ~~his or her whole debt, or diminish his or her dividend. [Repealed.]~~

16 § 1661. REAL ESTATE HELD IN TRUST LANDS; LICENSE TO
17 CONVEY TO BENEFICIARY

18 When a person dies seized of ~~lands~~ real estate held in trust for another
19 person or seized of ~~lands~~ real estate by virtue of a decree of foreclosure or sale
20 on execution to the deceased or to an executor or administrator on a debt
21 nominally owed to the deceased but actually owed to another person, after

1 notice, the ~~probate division of the superior court~~ Probate Division of the
2 Superior Court may grant license to the executor or administrator to ~~deed those~~
3 ~~lands~~ convey the real estate to the person, or to an executor or administrator,
4 for whose use and benefit they are ~~holden~~ held, and the court may decree the
5 execution of the trust, whether created by deed or by law.

6 § 1662. SALE OF ENCUMBERED PROPERTY OF DECEASED;

7 DISPOSITION OF SURPLUS

8 ~~The~~ When the executor or administrator is licensed to sell real or personal
9 estate of a ~~deceased person,~~ the decedent which is ~~mortgaged or pledged or has~~
10 ~~a lien thereon for the security of a debt, on motion of the executor,~~
11 ~~administrator or creditor, may be sold under the order of the probate division~~
12 ~~of the superior court. The net~~ subject to any mortgage or other lien, the net
13 sale proceeds shall be first applied towards to the payment of the secured debt
14 ~~which shall be reduced by the amount of the net proceeds of such sale. An~~
15 ~~executor or administrator may be licensed or ordered to sell any such real or~~
16 ~~personal estate under the same regulations as are provided in this chapter for~~
17 ~~the sale of real estate for the payment of debts. If the property sold is subject~~
18 to a devise under the will of the decedent, any surplus sale proceeds shall be
19 distributed to the devisee of the property. If the property sold is not subject to
20 a devise under the will of the decedent, any surplus sale proceeds shall be
21 administered by the executor or administrator as property of the estate.

1 § 1663. ~~MANNER OF SALE OF ENCUMBERED PROPERTY; DEED~~

2 ~~Such sale shall be made in such manner as the court directs. The sale of~~
3 ~~such real estate shall be at public auction unless it can otherwise be sold for a~~
4 ~~sum sufficient to satisfy the mortgage secured thereon. The executor or~~
5 ~~administrator and creditor shall execute the necessary deeds and papers for~~
6 ~~effecting the conveyance. [Repealed.]~~

7 § 1664. ~~ENCUMBERED PROPERTY; DISPOSITION OF SURPLUS~~

8 ~~After payment of the debts secured, the surplus of such sale shall be~~
9 ~~administered by the executor or administrator as such property would be if it~~
10 ~~were not held as security. A certificate of such sale, filed by the executor or~~
11 ~~administrator in the office of the clerk where by law a deed of such property is~~
12 ~~required to be recorded, shall operate as a discharge of such mortgage or lien.~~
13 ~~[Repealed.]~~

14 § 1665. ~~EXCEPTION; APPLICATION OF LAW~~

15 ~~Sections 1662–1664~~ Section 1662 of this title shall not affect the rights of a
16 ~~widow~~ surviving spouse, but shall apply to the application of the net proceeds
17 of a sale of mortgaged real estate sold pursuant to a license granted by the
18 ~~probate division of the superior court~~ Probate Division of the Superior Court
19 after February 1, 1901, ~~under other provisions of this chapter, and to the~~
20 ~~certificate of such sale filed by the executor or administrator in the office~~
21 ~~where by law a deed of such real estate is required to be recorded.~~

1 Sec. 10. 14 V.S.A. chapter 77 is amended to read:

2 CHAPTER 77. DECREES OF DISTRIBUTION OR PARTITION OF
3 ESTATES

4 § 1721. DISTRIBUTION; COURT TO ORDER; PERSONS ENTITLED TO
5 SHARES MAY RECOVER

6 (a) After payment of or provision for the debts, funeral charges, and
7 expenses of administration ~~and after the allowance, allowances~~ made for the
8 maintenance of the family ~~of the deceased~~ and ~~for the support of his or her~~ the
9 minor children, under seven years of age and after the assignment ~~of~~ to the
10 surviving spouse of ~~his her interest in the real estate and of his or her~~ the
11 elective or intestate share in the personal estate, or when sufficient effects are
12 reserved in the hands of the of decedent's estate:

13 (1) the executor or administrator for the above purposes may distribute
14 without court order personal estate in partial or full satisfaction of legacies,
15 bequests, and residuary interests in an aggregate amount not to exceed one-half
16 of the remaining estate;

17 (2) the court, upon motion of the executor or administrator, may order
18 partial distribution of devises, legacies, bequests, and residual shares, or order
19 other payments, before a final accounting and distribution; and

20 (3) after the Probate Division of the Superior Court approves a final
21 accounting and the Department of Taxes provides a notice of clearance, the

1 ~~probate division of the superior~~ court shall assign order the residue distribution
2 of the remaining estate ~~to the persons entitled to the same.~~

3 (b) In its ~~order~~ orders of distribution, the court shall name the persons and
4 proportions or parts to which each is entitled, and such persons may demand
5 and recover their respective shares from the executor or administrator or any
6 other person having ~~the same in his possession.~~ ~~The court may decline to~~
7 ~~make such distribution until suitable gravestones are erected at the grave of the~~
8 ~~deceased, if buried in this state, or the court may appropriate sufficient funds to~~
9 ~~supply such gravestones.~~ ~~The court may provide for the care of the burial lot~~
10 ~~of the deceased as hereinafter provided, before making such distribution~~
11 possession of them. In the event that the assets remaining in the hands of the
12 executor or administrator after one or more partial distributions are insufficient
13 to satisfy the ultimate expenses and charges against the estate, those persons
14 having received the distributions shall be liable to repay the executor or
15 administrator on a pro rata basis. If the executor or administrator cannot
16 collect against one or more of the persons to whom the distributions were
17 made, the amount not recoverable shall be equitably apportioned by the court
18 among the other persons subject to apportionment. The court may assign the
19 claim for recovery of previously distributed assets to persons directed by the
20 court to repay a disproportionate amount of the total.

1 (c) ~~On final settlement of a solvent estate, the probate division of the~~
2 ~~superior court may set aside funds of such estate not to exceed \$500.00 for the~~
3 ~~perpetual care of the burial lot of the deceased, and may order that the funds~~
4 ~~shall be kept in trust for the purpose of this subsection. If the burial lot of the~~
5 ~~deceased is in the cemetery of an incorporated cemetery association, the funds~~
6 ~~shall be deposited with such association. The executor or administrator shall~~
7 ~~include in its application for distribution of the residue that the decedent has~~
8 ~~been cremated and decedent's remains properly disposed of, or that a suitable~~
9 ~~gravestone has been erected or provided for at the grave of the deceased if~~
10 ~~buried in this State, and that perpetual care has been provided for the burial lot,~~
11 ~~if any.~~

12 § 1722. PARTIES INTERESTED MAY HAVE ORDER ON GIVING BOND

13 An order for distribution may be made on motion of the executor or
14 administrator or of ~~a person~~ one or more persons interested in the estate. The
15 heirs, devisees or legatees shall not be entitled to an order for distribution of
16 their shares until the ~~payment of the debts and allowances mentioned~~
17 conditions for distribution described in section 1721 of this title ~~and the several~~
18 ~~expenses there mentioned~~ have been ~~made or provided for~~ satisfied, unless
19 they give a bond, with a such surety ~~or sureties~~ as the court directs, to secure
20 the payment of ~~such debts and expenses, or~~ the amounts necessary to satisfy

1 ~~such part thereof as remains unprovided for~~ the conditions and to indemnify
2 the executor or administrator against the same.

3 § 1723. ADVANCEMENT; HOW ASSERTED; WHAT CONSTITUTES

4 An interested party may assert a claim that the decedent made a transfer
5 during life that was an advancement. The party making the a claim shall have
6 the burden of proving it. Real or personal estate given by a decedent during
7 the intestate in his ~~decedent's~~ lifetime to his or her child or other lineal
8 descendant shall be reckoned toward the share of such heir ~~the decedent's~~
9 estate otherwise allocable to the person to whom the lifetime gift was made as
10 an advancement, and for that purpose shall be considered a part of the estate, if
11 any of the intestate. Such estate following shall be deemed to be given apply:

12 (1) The decedent declares in a writing, signed in advancement only
13 when, in the presence of and subscribed by two disinterested persons, that a
14 gift or grant, it is expressed to be in was made as an advancement or is for the
15 consideration of love and affection, or when such estate is charged as such by
16 the deceased in writing, or when such estate is acknowledged as such by the
17 heir in writing, or when personal estate is delivered, expressly as advancement,
18 before two witnesses requested to take notice of it.

19 (2) The gift or grant is acknowledged in a signed writing as an
20 advancement by the recipient of the gift or grant.

1 § 1724. ADVANCEMENT RECKONED TOWARD HEIR'S SHARE

2 If the amount ~~so~~ advanced exceeds the share of the heir, ~~he or she~~ other
3 estate beneficiary, her or she shall be excluded from any further share in the
4 estate ~~and he or she~~ but shall not be liable to refund any part of the amount ~~so~~
5 advanced. If the advancement is less than the share of ~~such~~ the heir, ~~he or she~~
6 other estate beneficiary, he or she shall receive ~~such~~ a further sum that, with
7 ~~such~~ the advancement as, ~~will be equal to~~ equals his or her legal share in the
8 estate.

9 § 1725. APPLICATION OF ADVANCEMENT

10 (a) If ~~the amount so advanced~~ an advancement is in real estate property, the
11 same shall be set off, first, ~~toward~~ against the ~~heir's~~ heir's or other
12 beneficiary's share of real estate, ~~and property in the estate, including the real~~
13 property so advanced, and the excess value, if it is more than his or her share
14 of real estate, the balance any, shall be set off ~~toward his~~ against the heir's or
15 ~~her~~ other beneficiary's share of the decedent's personal estate.

16 (b) If ~~the~~ an advancement is in personal estate, the same shall be set off,
17 first, ~~toward~~ against the ~~heir's~~ heir or other beneficiary's share in the personal
18 estate, and ~~then toward his or her~~ the excess value, if any, shall be offset
19 against the heir or other beneficiary's share in the real property of the estate.

20 (c) If the heirs or beneficiaries consent, a different application of the
21 advancement may be made.

1 § 1726. ADVANCEMENT RECKONED TOWARD SHARE OF
2 REPRESENTATIVE OF DECEASED HEIR

3 If the ~~child or other lineal descendant, to whom such~~ recipient of an
4 ~~advancement is made,~~ dies before the ~~intestate~~ decedent, the advancement shall
5 be reckoned ~~toward~~ against the share of those interested in the ~~representative~~
6 estate by right of representation of the recipient, as it would be reckoned
7 toward the share of the ~~heir~~ recipient, if living.

8 § 1727. VALUATION OF ADVANCEMENT

9 Where the value of an advancement is expressed in the conveyance or in the
10 charge ~~thereof~~ made by the ~~intestate, or in the acknowledgment of the person~~
11 ~~receiving it~~ decedent, or by the ~~intestate~~ decedent at the time of ~~delivering it~~
12 declaration before two witnesses, ~~such~~ the advancement shall be taken to be of
13 the value so expressed or declared; otherwise it shall be estimated according to
14 the value at the time ~~of making it~~ was made.

15 § 1728. COURT TO DETERMINE QUESTIONS OF ADVANCEMENT

16 Questions as to an advancement made or alleged to have been made by the
17 deceased ~~to an heir~~ may be heard and determined by the ~~probate division of the~~
18 ~~superior court~~ Probate Division of the Superior Court and shall be specified in
19 the decree assigning the estate, regardless of whether the subject of a prior
20 court order. The final decree of the ~~probate division~~ Probate Division, or of

1 the ~~supreme court~~ Superior Court or Supreme Court on appeal, shall be binding
2 on ~~the~~ all persons interested in the estate.

3 § 1729. PARTITION

4 When the real or personal estate assigned to two or more heirs, devisees, or
5 legatees is in common and undivided, and their respective shares are not
6 separated and distinguished, partition and distribution of the same shall be
7 made by the ~~probate division of the superior court~~ Probate Division of the
8 Superior Court upon application by any interested heir, devisee, or legatee, and
9 shall be conclusive on ~~the heirs and devisees and persons claiming under them~~
10 ~~and upon~~ all persons interested.

11 § 1730. PARTITION OF REAL ESTATE IN DIFFERENT COUNTIES

12 If the real estate lies in different counties, the ~~probate division of the~~
13 ~~superior court~~ Probate Division of the Superior Court may appoint different
14 commissioners for each county. ~~In such case, the~~ The estate in each county
15 shall be divided separately as though there were no other estate to be divided.

16 § 1731. PARTITION UNNECESSARY WHEN PARTIES AGREE

17 When the ~~probate division of the superior court~~ Probate Division of the
18 Superior Court distributes ~~the residue~~ assets of an estate to one or more persons
19 entitled to the same, it shall not be necessary to make partition of the ~~estate,~~
20 assets distributed if the parties to whom the assignment is made agree to
21 ~~dispense with~~ an allocation of assets without partition.

1 § 1734. PARTITION WHEN OWNERSHIP HAS CHANGED

2 Partition of ~~the~~ real estate may be made although some of the original heirs
3 or devisees have conveyed their shares to other persons. ~~Such~~ The shares shall
4 be set out to the persons holding the same, as they would have been to the heirs
5 or devisees.

6 § 1735. SHARES, HOW SET OUT IN PARTITION

7 The shares in the real and personal estate shall be set out to each individual,
8 in proportion to his or her right, by ~~such~~ metes and bounds or other description
9 that ~~the same can~~ permits the shares to be easily distinguished, ~~unless~~ except to
10 the extent that two or more of the parties interested consent to have their shares
11 set out so as to be held by them in common and undivided.

12 § 1736. SEVERANCE FROM ESTATE OF THIRD PERSONS

13 When partition of real estate among heirs or devisees is required and the
14 real estate lies in common and undivided with the real estate of another person,
15 the court shall ~~first~~ have jurisdiction to and shall divide and sever the estate of
16 the deceased from the estate ~~with which it lies in common~~ of the other person.
17 A division made pursuant to this section by the ~~probate division of the superior~~
18 ~~court~~ Probate Division of the Superior Court shall be binding on persons
19 interested.

1 § 1737. WHEN ESTATE CANNOT BE DIVIDED WITHOUT INJURY; TO
2 BE SOLD; PROCEDURE

3 When the real estate of a decedent, or any part ~~thereof~~ of it greater than the
4 share ~~therein~~ in it of any one of the heirs, cannot be divided without prejudice
5 or inconvenience to the owners, proceedings may be had for the assignment or
6 sale of the real estate in the probate division of the superior court Probate
7 Division of the Superior Court ~~for the assignment or sale thereof.~~

8 § 1739. FINAL DECREE OF DISTRIBUTION OR PARTITION; BOND

9 The ~~probate division of the superior court~~ Probate Division of the Superior
10 Court shall not make a final decree of distribution or partition in an estate
11 against which a person engaged in the military service of the United States and
12 without this ~~state~~ State has a claim, until a bond is filed in ~~such~~ the court by the
13 creditors, heirs, legatees, or devisees or some one or more of them, in ~~such~~ a
14 sum and with ~~such~~ sureties as the court directs, conditioned to pay ~~such~~ the
15 claimant ~~such~~ the sum of money as that is finally allowed him or her against
16 ~~such~~ the estate.

17 § 1740. PAYMENT OF EXPENSES; FROM ESTATE, IF SUFFICIENT

18 At the time of partition or distribution of an estate, if the executor or
19 administrator has retained sufficient ~~effects in his hands~~ assets which may
20 lawfully be applied for that purpose, the expenses of ~~such~~ partition or

1 distribution may be paid by the executor or administrator when it appears to
2 the court equitable and not inconsistent with the intention of a testator.

3 § 1741. PARTIES TO PAY COST OF PARTITION, WHEN

4 If there are ~~no effects~~ insufficient assets in the hands of the executor or
5 administrator which may be lawfully applied to ~~that purpose~~ the costs of
6 partition, the expenses and charges of partition, ~~being ascertained in the~~
7 ~~probate division of the superior court,~~ determined by the Probate Division of
8 the Superior Court shall be paid by the parties interested in the partition in
9 proportion to their respective shares or interests in the premises and the
10 proportions shall be ~~settled and~~ allowed by the ~~probate division of the superior~~
11 court. If a person interested in the partition does not pay his proportion or
12 share, the court may issue ~~an execution~~ a judgment order for the sum assessed,
13 ~~in~~ for the name benefit of the executor or administrator against the party not
14 paying, returnable in 60 days from the date ~~thereof~~ of the order.

15 § 1742. RECORD OF DECREES RELATING TO REAL ESTATE; WHERE

16 RECORDED

17 Certified copies of final orders or decrees of a ~~probate division of the~~
18 ~~superior court~~ Probate Division of the Superior Court relating to real estate
19 shall be recorded in the office where by law a deed of ~~such~~ the real estate is
20 required to be recorded.

1 § 1743. ~~PARTIAL DISTRIBUTIONS~~

2 ~~Probate divisions of the superior courts are hereby authorized to issue~~
3 ~~orders directing payment of devises, legacies, bequests and partial payment of~~
4 ~~distributions or shares upon motion of the executor or an administrator for this~~
5 ~~purpose. An order shall issue when the court is satisfied that sufficient assets~~
6 ~~have been reserved by the executor or administrator in order to satisfy the~~
7 ~~several expenses mentioned in section 1721 of this title along with the~~
8 ~~anticipated administrative expenses and taxes that may be charged to the~~
9 ~~estate. In the event that the assets remaining in the hands of the executor or~~
10 ~~administrator thereafter are insufficient to satisfy the ultimate expenses and~~
11 ~~charges against the estate, those persons having received these distributions~~
12 ~~shall be liable to repay the executor or administrator on a pro rata basis.~~
13 ~~However, if the executor or administrator cannot collect against a person, the~~
14 ~~amount not recoverable shall be equitably apportioned by the court among the~~
15 ~~other persons subject to apportionment. [Repealed.]~~

16 Sec. 11. 14 V.S.A. chapter 79 is amended to read:

17 CHAPTER 79. CONVEYANCE WHEN RECORD HOLDER DECEASED

18 § 1801. TITLE IN DECEASED PERSONS; PETITION TO PROBATE

19 DIVISION OF THE SUPERIOR COURT

20 When the record title to real estate or an interest therein stands in the name
21 of a person who has been deceased for more than seven years and the estate of

1 ~~such~~ the person has not been probated and the interest of the heirs in that real
2 estate has not been conveyed or has been defectively conveyed, the ~~probate~~
3 ~~division of the superior court~~ Probate Division of the Superior Court where
4 venue lies, upon verified petition and after notice and hearing as provided by
5 the ~~rules of probate procedure~~ Rules of Probate Procedure, shall determine
6 whether the deceased person or the decedent's heirs are possessed of an
7 existing enforceable title or interest in that real estate.

8 § 1802. DETERMINATION BY COURT OF PERSONS ENTITLED TO
9 ESTATE

10 If the court ~~shall determine~~ determines that the heirs or personal
11 representatives of the deceased person are not at the time of ~~such~~ the hearing in
12 possession of the real estate and are not entitled to re-enter ~~the same~~ it or to
13 institute and maintain a suit to recover possession ~~thereof~~ of it, the court shall
14 adjudge and decree that the real estate constitutes no beneficial part of the
15 estate of ~~such~~ the deceased person and may appoint an administrator to convey
16 the record title of the real estate to the person or persons adjudged by ~~it~~ the
17 court to be legally entitled ~~thereto~~ to it.

18 § 1803. PETITION

19 A petition under this chapter may be brought by any person in possession or
20 who claims the right to possession of the real estate. It shall recite the facts
21 upon which it is based and shall specify the names and addresses of the heirs

1 and representatives of the deceased person, and of all claimants so far as each
2 class is known to the petitioner.

3 § 1804. APPEARANCE; APPEAL

4 A person not so served may become a party defendant by entering his or her
5 appearance with the ~~probate division of the superior court~~ Probate Division of
6 the Superior Court before the expiration of the time ~~herein limited~~ provided by
7 this section for appeal. An appeal may be taken by any person in interest
8 within 30 days from any final decree of ~~the probate division of the superior~~
9 ~~court hereunder by any person in interest~~ issued under this chapter by the
10 Probate Division of the Superior Court.

11 Sec. 12. 14 V.S.A. chapter 80 is added to read:

12 CHAPTER 80. WAIVER OF ADMINISTRATION

13 § 1851. APPLICABILITY

14 This chapter shall apply to all estates, testate, and intestate, other than small
15 estates administered under chapter 81 of this title.

16 § 1852. MOTION FOR WAIVER OF ADMINISTRATION; ORDER

17 (a) A motion for waiver of administration may be submitted to the Probate
18 Division of the Superior Court with the petition to open the estate or at any
19 time before an accounting is due. The motion shall be made under oath and
20 shall state that:

1 (1)(A) if the decedent died testate, the moving party is the sole
2 beneficiary of the decedent's estate, and has been nominated and proposes to
3 serve as sole executor; or

4 (B) if the decedent died intestate, the moving party is the sole heir of
5 the decedent's estate and proposes to serve as sole administrator;

6 (2) the moving party is the sole fiduciary of the estate;

7 (3) the decedent owned no real property in the State of Vermont; and

8 (4) the administration of the estate will be complete without supervision
9 by the Probate Division of the Superior Court in accordance with the
10 decedent's will and applicable law.

11 (b) The court may grant the motion to waive further administration if it
12 finds that:

13 (1) the moving party is the only estate beneficiary under the will of a
14 decedent or the only heir of a decedent who died intestate;

15 (2) the moving party is the sole fiduciary of the estate; and

16 (3) the decedent owned no real property in the State of Vermont.

17 (c) If the court grants a motion to waive further administration filed under
18 subsection (a) of this section, it shall issue an order waiving the duty to file an
19 inventory, waiving or discharging the fiduciary bond, and dispensing with
20 further filing with the court other than the final affidavit of administration.

1 § 1853. ADMINISTRATION

2 (a) Administration of an estate under this chapter may be completed upon
3 the court's approval of the executor's or administrator's affidavit of
4 administration. Unless extended by the court, the affidavit shall be filed not
5 less than six months or more than one year after the date of appointment of the
6 executor or administrator.

7 (b)(1) The affidavit of administration shall state that to the best of the
8 knowledge and belief of the executor or administrator:

9 (A) there are no outstanding expenses of administration, or unpaid
10 or unsatisfied debts, obligations, or claims attributable to the decedent's
11 estate; and

12 (B) no taxes are due to the State of Vermont, and tax clearance has
13 been received from the Department of Taxes.

14 (2) If the executor or administrator fails to file the affidavit of
15 administration within the time prescribed by subsection (a) of this section, the
16 executor or administrator shall be in default. If he or she fails to file the
17 affidavit or a request for additional time within 15 days after receiving notice
18 of default, the court may impose sanctions it deems appropriate, including an
19 order that waiver of administration is no longer available. The court shall
20 provide notice of the default to the executor or administrator by first class mail
21 or other means allowed by the Rules of Probate Procedure.

1 § 1854. DISCHARGE OF EXECUTOR OR ADMINISTRATOR

2 Upon the submission of an affidavit of administration, the Probate Division
3 of the Superior Court may close the estate and discharge the executor or
4 administrator if it determines that the provisions of sections 1851 and 1852 of
5 this title have been met.

6 Sec. 13. 14 V.S.A. chapter 101 is amended to read:

7 CHAPTER 101. PROBATE BONDS; EXECUTORS, ADMINISTRATORS,
8 TRUSTEES, GUARDIANS

9 § 2101. PROBATE BONDS; AMOUNT; SURETIES; FOR WHOSE

10 BENEFIT; TO WHOM TAKEN

11 Bonds required to be taken by order of the ~~probate division of the superior~~
12 ~~court~~ Probate Division of the Superior Court shall be for such sum and with
13 such surety or sureties as the court directs, except where the law otherwise
14 prescribes. ~~Such~~ The bonds shall be for the security and benefit of all persons
15 interested and shall be taken to the ~~probate division of the superior court~~
16 Probate Division of the Superior Court except where they are to be taken to the
17 adverse party.

18 § 2102. FOREIGN COMPANY; CERTIFICATE OF AUTHORITY; FEE

19 A Probate Division of the Superior Court shall not accept a foreign fidelity
20 insurance company as surety on a bond required to be filed in such Court,
21 unless ~~such~~ the company is authorized to do business in this State and has filed

1 in ~~such Court~~ the court a certificate of the Commissioner of Financial
2 Regulation that ~~such~~ the company is so authorized. A fee of \$1.00 for each
3 certificate so issued shall be paid to the Commissioner of Financial Regulation
4 for the benefit of the State by the company requesting its issuance.

5 § 2103. RECORD; EVIDENCE

6 Upon acceptance and approval of bonds required to be given to a ~~probate~~
7 ~~division of the superior court~~ Probate Division of the Superior Court, ~~such the~~
8 bonds shall be filed and docketed in the office of ~~such~~ the court to which they
9 are given. A copy ~~thereof~~ of the bond duly certified by ~~such~~ the court shall be
10 evidence in all cases as to the facts ~~therein~~ stated in it, as though the original
11 were produced.

12 § 2104. MOTION, WHEN BOND IS INSUFFICIENT

13 If a surviving spouse, heir, creditor, devisee, or legatee of a decedent or
14 their legal representatives, or a person interested in a trust estate, considers the
15 bond given to the ~~probate division of the superior court~~ Probate Division of the
16 Superior Court by a fiduciary insufficient, they may file a motion for an
17 additional bond. The court shall ~~thereupon~~ schedule a hearing and notice shall
18 be given as provided by the ~~rules of probate procedure~~ Rules of Probate
19 Procedure. If it appears to the court that the bond is not sufficient, it shall
20 order the fiduciary to give a new and sufficient bond within the time limited.

1 If the new bond is not filed within that new time, the court shall remove the
2 fiduciary and fill the vacancy.

3 § 2105. SURETY MAY MOVE FOR NEW BOND AND SETTLEMENT;
4 REMOVAL

5 If the surety for a fiduciary considers himself or herself in danger of being
6 injured thereby, a motion may be filed to order the fiduciary to settle the
7 account and give a new bond. Upon notice and hearing, if it appears to the
8 ~~probate division of the superior court~~ Probate Division of the Superior Court
9 that the surety is in danger of being injured, it shall order the fiduciary to settle
10 the account and give a new bond. When a new bond is filed and approved, the
11 surety shall be discharged. If the fiduciary does not settle the accounts and
12 give a new bond when so ordered, the ~~probate division of the superior court~~
13 shall remove the fiduciary and fill the vacancy.

14 § 2106. NEW BOND

15 When a fiduciary desires to file a new bond with sureties in substitution for
16 the bond then on file, the ~~probate division of the superior court~~ Probate
17 Division of the Superior Court, in its discretion and upon notice may allow a
18 new bond to be filed. Upon approving the new bond, the court may accept ~~the~~
19 ~~same~~ it in substitution for any and all bonds previously filed by the fiduciary
20 and discharge the sureties on the former bond or bonds from liability accruing
21 after the substituted bond is filed.

1 § 2107. DISCHARGE OF EXECUTOR, ADMINISTRATOR, TRUSTEE,
2 GUARDIAN; ACCOUNT; EXONERATION OF SURETY

3 When an executor, administrator, trustee or guardian has paid and delivered
4 over to the persons entitled ~~thereto~~ to it the money or other property in his or
5 her hands as required by a decree of the ~~probate division of the superior court~~
6 Probate Division of the Superior Court, he or she may perpetuate the evidence
7 thereof by presenting to ~~such~~ the court within one year after the decree is made
8 or within ~~such~~ a time thereafter as that the court ~~may allow~~ allows, an account
9 of ~~such~~ the payment or the delivery over of ~~such~~ the property. If it is proved to
10 the satisfaction of the court and verified by the oath of the accountant, ~~such~~ the
11 account shall be allowed as his or her final discharge and ordered to be
12 recorded. ~~Such~~ The discharge shall forever exonerate the accountant and his or
13 her sureties from liability under ~~such~~ the decree, unless his or her account is
14 impeached for fraud or manifest error.

15 § 2108. HOW PROSECUTED

16 Bonds given to the ~~probate division of the superior court~~ Probate Division
17 of the Superior Court shall be prosecuted in the ~~superior court~~ Superior Court
18 of the county in which they were given for the benefit of those injured by the
19 breach of their conditions, in the following manner:

20 (1) A person claiming to be injured by a breach of the condition of a
21 bond may file a motion for permission to prosecute the ~~same~~ bond and shall

1 give a bond to the adverse party to the satisfaction of the ~~probate division of~~
2 ~~the superior court~~ Probate Division, on the condition that he or she will
3 prosecute ~~the same~~ it to effect and pay the costs awarded if recovery is not
4 obtained;

5 (2) The ~~probate division of the superior court~~ Probate Division shall
6 grant permission to prosecute the bond and on paying the fees, shall furnish to
7 the applicant a certified copy of the bond, with a certificate that leave to
8 prosecute it has been granted, and the name and residence of the applicant;

9 (3) The applicant shall cause his or her name to be indorsed as
10 prosecutor upon the writ and shall file the copy of the bond and the certificate
11 furnished by the ~~probate division of the superior court~~ Probate Division, with
12 the writ, in the ~~superior court~~ Superior Court to which and when it is
13 returnable; and ~~such~~ the applicant shall be deemed to be the prosecutor of ~~such~~
14 the bond;

15 (4) The complaint on the bond shall definitely assign and set forth the
16 breaches of the conditions on which the prosecutor relies;

17 (5) The ~~superior court~~ Superior Court to which the writ is returned shall
18 render judgment, as on nihil dicit, for the penalty of the bond in favor of the
19 ~~probate division of the superior court~~ Probate Division of the Superior Court
20 and against the defendants, or ~~such of them as~~ those defendants who do not

1 comply with the terms ~~mentioned~~ provided in subdivision (6) of this section,
2 but costs shall not be taxed on ~~such~~ the judgment;

3 (6) The defendants who ~~may~~ wish to resist ~~such~~ the judgment shall, on
4 or before 21 days after ~~the~~ service of ~~such~~ the writ, plead a general denial, and,
5 with their plea, file their affidavit, stating that they believe or are advised that
6 they did not execute or deliver ~~such~~ the bond; or they shall demur to the
7 complaint;

8 (7) On trial, if the issue on ~~such~~ the plea or demurrer is found in favor of
9 the plaintiff, judgment shall be rendered for the penalty of the bond, as
10 ~~mentioned~~ provided in subdivision (5) of this section, and the prosecutor shall
11 recover against the defendants entering ~~such~~ the plea or demurrer the costs
12 ~~occasioned thereby of the action~~, and ~~forthwith~~ have execution for ~~the same~~
13 them in his or her own name;

14 (8) When judgment is rendered for the penalty of the bond against all
15 the defendants, the ~~same~~ judgment shall remain in force as security for other
16 breaches of the conditions of the bond, which may be afterwards assigned and
17 proved;

18 (9) The action shall thereafter proceed and be prosecuted in the name of
19 the prosecutor, on the breaches assigned. Upon prevailing, the prosecutor shall
20 have judgment in his or her own name for damages and costs, but if judgment

1 is rendered for the defendants on an issue joined in ~~such~~ the action or on
2 nonsuit, they shall recover double costs against the prosecutor.

3 § 2109. PERSON INJURED; ACTION ON BOND OR JUDGMENT

4 After a person is injured by the breach of the condition of the bond, he or
5 she may bring from time to time an action in his or her own name on the
6 judgment rendered for the penalty of the bond. In that action, he or she shall
7 assign and set forth the breaches on which he or she relies and may recover
8 ~~such damage as~~ the damages that he or she proves, with costs.

9 § 2110. CLAIMS FOR BREACH MAY BE PROSECUTED BY

10 REPRESENTATIVES

11 Claims for damages for breach of the conditions of a bond may be
12 prosecuted by an executor, administrator or guardian in behalf of those he or
13 she represents, in the same manner as by persons living. ~~Such~~ The claims may
14 be prosecuted against the representatives of deceased persons as other claims
15 against decedents.

16 Sec. 14. 14 V.S.A. chapter 103 is amended to read:

17 CHAPTER 103. MORTGAGES AND LEASES BY EXECUTORS,

18 ADMINISTRATORS, TRUSTEES, OR GUARDIANS

1 § 2201. MORTGAGE OF PROPERTY BY FIDUCIARY; MOTION;

2 ORDER; LICENSE

3 ~~If on~~ (a) On motion and after notice and hearing it appears to be for with
4 ~~the benefit~~ written consent of the ~~estate~~ interested persons, or after hearing, the
5 ~~probate division of the superior court~~ Probate Division of the Superior Court
6 may authorize a fiduciary to mortgage any of the real estate or to mortgage,
7 pledge or assign any of the personalty of the estate for the ~~following purposes:~~
8 ~~to prevent a sacrifice~~ benefit of the estate; ~~to make repairs and improvements~~
9 ~~upon the estate; to pay debts, legacies or charges of administration; to pay an~~
10 ~~existing mortgage, lien or tax on the estate, or to support a ward. The probate~~
11 ~~division of the superior court~~ court may authorize a fiduciary to ~~make~~ enter
12 into an agreement for the extension or renewal of ~~that~~ an existing mortgage or
13 lien or of any other mortgage, lien, pledge or assignment created under the
14 provisions of this chapter.

15 (b) A motion filed under this section shall describe the property to be
16 mortgaged, pledged, or assigned and shall include the purpose of the
17 obligation, the limits of the principal amount, the interest rate, and the term of
18 the note to be secured by the mortgage. A license issued by the Probate
19 Division pursuant to this section shall fix the terms and conditions under which
20 the property may be mortgaged, pledged or assigned. The court may order all
21 or any part of the obligation secured by the mortgage to be paid from time to

1 time out of the income of the property mortgaged. A certified copy of the
2 license shall be recorded in the office where the mortgage is recorded.

3 § 2202. ~~MOTION; DECREE~~

4 ~~The motion shall set forth a description of the property to be mortgaged,~~
5 ~~pledged or assigned, the amount of money necessary to be raised, the nature~~
6 ~~and amount of the obligation to be secured and the purpose for which the~~
7 ~~money or security is required. The decree of the probate division of the~~
8 ~~superior court shall fix the amount for which the mortgage, pledge or~~
9 ~~assignment may be given, the terms thereof and the rate of interest which may~~
10 ~~be paid thereon, and the court may order the whole or any part of the money~~
11 ~~secured by the mortgage to be paid from time to time out of the income of the~~
12 ~~property mortgaged. [Repealed.]~~

13 § 2203. ~~LEASE; WHEN AUTHORIZED~~ OF PROPERTY BY FIDUCIARY;
14 ORDER; LICENSE

15 ~~Upon~~ (a) On motion of and with the written consent of the interested
16 parties, or after hearing, the Probate Division of the Superior Court may
17 authorize a fiduciary describing to lease all or part of the real or personal
18 property of the estate which the for the benefit of the estate. The court may
19 authorize a fiduciary considers necessary or expedient to lease, therein stating
20 the length of the term and the reason for executing a to enter into an agreement
21 for the extension or renewal of an existing lease, after notice and hearing, if it

1 ~~appears to be necessary or expedient, the probate division of the superior court~~
2 ~~may authorize the petitioner to execute a written lease of a part or all of the~~
3 ~~property, and the order of the court or of any other lease created under the~~
4 ~~provisions of this chapter. A lease for a period of less than seven consecutive~~
5 ~~months shall not require a license.~~

6 (b) A motion filed under this section shall describe the property to be
7 leased and shall include the prospective lessee, if known, the proposed use of
8 the leased property, the limits of the proposed term of the lease, and the
9 proposed rental. A license issued by the Probate Division pursuant to this
10 section shall fix the terms and conditions under which it the property may be
11 leased.

12 Sec. 15. 14 V.S.A. chapter 105 is amended to read:

13 CHAPTER 105: TRUSTS AND TRUSTEES

14 § 2303. ~~FILED; HOW SUED~~

15 ~~A bond shall be filed in the probate division of the superior court and when~~
16 ~~the superior court upon application so orders, the bond may be sued in the~~
17 ~~name of the probate division of the superior court to which the same is taken~~
18 ~~for the benefit of persons interested. [Repealed.]~~

19 § 2305. ~~TRUSTEES OF ABSENT PERSONS—DEFINITION~~

20 ~~For the purposes of sections 2306–2310 of this title, an absent person is~~
21 ~~defined as one having a domicile, property, or evidences of property in this~~

1 ~~State who suddenly or mysteriously disappears under such circumstances as to~~
2 ~~satisfy the Probate Division of the Superior Court of the proper district that~~
3 ~~there is reasonable ground to believe that he or she is lost, dead, or lacks~~
4 ~~capacity due to a mental condition or psychiatric disability, or is one who,~~
5 ~~having a domicile, property, or evidences of property in this State, remains~~
6 ~~beyond the sea or absents himself or herself in this State or elsewhere and is~~
7 ~~unheard of for three years. [Repealed.]~~

8 § 2306. ~~TRUSTEES; APPOINTMENT OVER ABSENT PERSON'S~~
9 ~~ESTATE~~

10 ~~(a) In the case of an absent person, the probate division of the superior~~
11 ~~court shall appoint one or more trustees of the absent person's estate on~~
12 ~~application by petition, the appointment to take precedence and apply to all~~
13 ~~property belonging to such absent person wherever the same may be located.~~

14 ~~(b) A petition to appoint one or more trustees of an absent person's estate~~
15 ~~shall be made by:~~

16 ~~(1) One or more of his or her nearest relatives; or~~

17 ~~(2) The executor or administrator aforesaid; or~~

18 ~~(3) The town service officer of the town where the absent person had a~~
19 ~~last known domicile in the state, or in case he or she had no domicile in the~~
20 ~~state, then where his or her property or any portion thereof is located.~~

21 [Repealed.]

1 § 2307. ~~NOTICE OF APPOINTMENT; ACCOUNT; PAYMENT TO~~
2 ~~TRUSTEE; APPEAL~~

3 ~~(a) Upon the petition of an executor or administrator for the appointment of~~
4 ~~a trustee under the provisions of sections 2305 and 2306 of this title, notice~~
5 ~~shall be given as provided by the rules of probate procedure and the same~~
6 ~~proceedings shall be had as upon the allowance of an administrator's account.~~

7 ~~(b) The executor or administrator shall render to the probate division of the~~
8 ~~superior court an account of the moneys or securities representing the legacy or~~
9 ~~distributive share of the absent person in the hands of the executor or~~
10 ~~administrator, and all reasonable charges and expenses pertaining to the care~~
11 ~~and management thereof. On order of the probate division of the superior~~
12 ~~court, the executor or administrator shall turn over and pay to the trustee so~~
13 ~~appointed by the court to receive the same the sums due the absent person, and~~
14 ~~thereupon the executor or administrator shall be discharged from further~~
15 ~~liability in the premises.~~

16 ~~(c) The same appeal may be had from the appointment of a trustee as from~~
17 ~~the appointment of administrators and upon the settlement of their accounts.~~

18 ~~[Repealed.]~~

19 ~~§ 2308. POWERS OF TRUSTEES FOR ABSENT PERSONS~~

20 ~~The trustees shall be vested with all the property, real and personal, rights,~~
21 ~~choses in action and evidences of property or indebtedness belonging to such~~

1 absent person, and may take possession of such property and collect the
2 demands, pay the debts of such person and may maintain or defend an action
3 necessary to protect the property or rights of such person. [Repealed.]

4 § 2309. ~~CLAIMS AGAINST ESTATE OF ABSENT PERSON;~~

5 ~~PROCEDURE~~

6 If claims against such person are disputed, the same proceedings shall be
7 had for ascertaining the amount due and its payment as provided in the case of
8 disputed claims against wards. [Repealed.]

9 § 2310. ~~APPEARANCE OF ABSENT PERSON; SURRENDER OF~~

10 ~~PROPERTY~~

11 If the person so absent proves to be alive, the trustees shall surrender to him
12 or her all property, or the proceeds of the same, which shall have come into
13 their hands. If administration has been or shall be granted on his or her estate,
14 the trustees shall surrender to the executor or administrator all property, effects
15 and estate of such absent person, upon rendering an account of their trusteeship
16 in the same manner and upon the same notice as in case of settlement of an
17 administrator's account. [Repealed.]

18 § 2318. ~~OTHER TRUSTEES, WHEN~~

19 The probate division of the superior court may appoint trustees in cases not
20 otherwise provided for when the use of property, real or personal, descends to
21 a person for life or for a term of years, and shall have the same power to

1 ~~enforce such trust which such court has in case of guardians of minor children.~~

2 [Repealed.]

3 § 2327. ~~FURTHER POWERS OF COURT; EQUITY POWERS~~

4 ~~The probate division of the superior court may further hear and determine in~~
5 ~~equity all other matters relating to the trusts mentioned in this chapter.~~

6 [Repealed.]

7 § 2329. TESTAMENTARY ADDITIONS TO TRUSTS; POUR OVER
8 TRUSTS

9 A devise or bequest, the validity of which is determinable by the law of this
10 state State, may be made by a will to the trustee or trustees of a trust
11 established or to be established by the testator or by the testator and some other
12 person or persons or by some other person or persons (including a funded or
13 unfunded life insurance trust, although the trustor has reserved any or all rights
14 of ownership of the insurance contracts) if the trust is identified in the
15 testator's will and its terms are set forth in a written instrument (other than a
16 will) executed before or concurrently with the execution of the testator's will
17 or in the valid last will of a person who has predeceased the testator (regardless
18 of the existence, size, or character of the corpus of the trust). The devise or
19 bequest shall not be invalid because the trust is amendable or revocable, or
20 both, or because the trust was amended after the execution of the will or after
21 the death of the testator. Unless the testator's will provides otherwise, the

1 property so devised or bequeathed: (a) shall not be deemed to be held under a
2 testamentary trust of the testator, but shall become a part of the trust to which it
3 is given; and (b) shall be administered and disposed of in accordance with the
4 provisions of the instrument or a will of a person other than the testator setting
5 forth the terms of the trust, including any amendments thereto made before the
6 death of the testator (regardless of whether made before or after the execution
7 of the testator's will) and, if the testator's will so provides, including any
8 amendments to the trust made after the death of the testator. A revocation or
9 termination of the trust before the death of the testator shall cause the devise or
10 bequest to lapse. However, when the testator's will specifically sets forth the
11 terms of the trust, whether or not such trust is subsequently amended, revoked,
12 or terminated, the property devised or bequeathed under the will shall be
13 deemed to be held under a testamentary trust of the testator and shall be
14 administered and disposed of in accordance with the provision of the
15 testator's will.

16 Sec. 16. 14 V.S.A. chapter 107 is amended to read:

17 CHAPTER 107. CONVEYANCES AND DEVISES TO
18 UNCERTAIN BENEFICIARIES

1 § 2401. UNCERTAIN BENEFICIARIES; ~~GOVERNOR~~ PROBATE

2 DIVISION OF THE SUPERIOR COURT MAY APPOINT AGENT

3 OR ATTORNEY

4 When a devise, legacy, gift, or trust is made to or for the benefit of a class
5 or classes of beneficiaries in this ~~state~~ State, whose members are not all
6 ascertained or definitely ascertainable, ~~in his discretion, the governor~~ Probate
7 Division of the Superior Court may in its discretion appoint a person or
8 persons as agent or attorney to represent ~~such~~ the beneficiaries, who shall act
9 for them and their interests, without expense to the ~~state~~ State, in any litigation,
10 contest, or compromise in relation to ~~such~~ the devise, legacy, gift, trust, will,
11 contract, or instrument by which the same is given.

12 § 2402. PROBATE DIVISION OF THE SUPERIOR COURT MAY

13 APPOINT TRUSTEES; DUTIES

14 (a) When, under the provisions of a will probated in another state or
15 country, or of a decree of a court of another state or country, a devise, legacy,
16 gift, or trust belongs to or for the benefit of a class or classes of beneficiaries in
17 this ~~state~~ State, whose members are not all ascertained or definitely
18 ascertainable, or is appropriated or devoted to any purpose or benefit in which
19 the public or a class of the public in this ~~state~~ State is interested, the Probate
20 Division of the Superior Court may appoint one or more trustees to take charge

1 of the payment and distribution of the devise, legacy, gift, or trust under the
2 will or decree.

3 (b) The trustee or trustees shall give bonds and render accounts annually of
4 all transactions to the Probate Division of the Superior Court and shall be
5 subject to the same liabilities, and the Court shall have the same power as in
6 case of other trustees appointed by the Probate Division of the Superior Court.

7 § 2403. TRUSTEES, WHEN APPOINTED

8 A trustee may be appointed by the ~~probate division of the superior court~~
9 Probate Division of the Superior Court upon petition of any person, class, or
10 beneficiary coming within the provision of the will or decree, or upon petition
11 of a corporation representing beneficiaries under the will or decree.

12 ~~§ 2404. DUTIES OF EXECUTOR OR TRUSTEE UNDER WILL OR~~
13 ~~DECREE~~

14 ~~The executor or trustee under such will or decree shall pay over to such~~
15 ~~trustee or trustees named in section 2402 of this title, the amount to be given or~~
16 ~~distributed to such beneficiaries under such will or decree and take a receipt for~~
17 ~~the same, and such trustee or trustees shall pay out and distribute the same~~
18 ~~according to the provisions of such will or decree. [Repealed.]~~

1 Sec. 17. 14 V.S.A. chapter 109 is amended to read:

2 CHAPTER 109. ~~PHILANTHROPIC TRUSTS~~ [Repealed.]

3 § 2501. ~~CHARITABLE, CEMETERY, AND PHILANTHROPIC TRUSTS;~~

4 ANNUAL REPORTS

5 ~~Every trustee or board of trustees, incorporated or unincorporated, who~~
6 ~~holds in trust, within this state, property given, devised, or bequeathed to~~
7 ~~cemetary associations or societies and towns which hold funds for cemetery~~
8 ~~purposes, and who administers or is under a duty to administer the same in~~
9 ~~whole or in part for such purposes, annually, on or before the first day of~~
10 ~~September, shall make a written report to the probate division of the superior~~
11 ~~court showing the property so held and administered, the receipts and~~
12 ~~expenditures in connection therewith, the whole number of beneficiaries~~
13 ~~thereof and such other information as the probate division of the superior court~~
14 ~~may require.~~ [Repealed.]

15 § 2502. PENALTY

16 ~~Failure for two successive years to file such report shall constitute a breach~~
17 ~~of trust and shall be reported by such probate division of the Superior Court to~~
18 ~~the attorney general or state's attorney, who shall take such action as may be~~
19 ~~appropriate to compel compliance with this chapter.~~ [Repealed.]

1 § 2503. ~~EXEMPTION~~

2 ~~A trustee or board of trustees who makes a printed annual report that is~~
3 ~~satisfactory to a town, city, incorporated village or town school district~~
4 ~~interested in a trust fund shall be exempt from the provisions of this chapter.~~

5 [Repealed.]

6 Sec. 18. EFFECTIVE DATE

7 This act shall take effect on July 1, 2016.